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This thesis addresses certain political and legal aspects of the organisation of Christianity in North Africa in the fourth and early fifth centuries CE, particularly as addressed in arguments put forward by Augustine of Hippo. Its focus is on the group of North African Christians known as the 'Donatists' who were separated from the universal (i.e. 'Catholic') Church at that time because of a historical break dating back to the imperial anti-Christian measures of 303, during which they alleged that many leaders had compromised with the authorities. This thesis demonstrates that, despite the implicit assumptions of most modern scholarship on the topic, the Donatists were not politically naive, but rather were experienced and practised at appealing to the imperial courts in North Africa and in Italy. This thesis examines those Donatist legal appeals closely. It then turns to look at how Augustine used those legal precedents set by the Donatists when he justified using laws passed by the imperial authorities to coerce the Donatists back into Augustine's Catholic church. This thesis shows that although Augustine has been seen as one of the most important voices supporting coercion of religious dissenters, the legal tactics he used against the Donatists were commonplace in the ecclesiastical politics of the day, and were tactics extensively used by the Donatists themselves.

COERCIVE PRECEDENTS:
THE PLACE OF DONATIST APPEALS IN AUGUSTINE'S
ANTI-DONATIST POLEMIC

BY

JOSHUA M. BRUCE

DOCTOR OF PHILOSOPHY
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2018

Declaration:

I, Joshua M. Bruce, hereby certify that this thesis has been written by me; that it is the record of work carried out by me; and that it has not been submitted in any previous application for higher degree.

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To Andrew and Jack

ABSTRACT

Augustine's justifications for imperial coercion of the Donatist Church set the precedent for many later rationalizations of coercion against religious dissidents. But they themselves were not without precedent. This thesis asks the question: to what extent were Augustine's justifications for coercion shaped by his own North African juridical precedents, most especially the appeals to imperial authorities by Donatist leaders during the fourth- and early fifth-centuries? This thesis demonstrates that Augustine's justifications for coercion were themselves revised Donatist arguments and tactics. In particular, it places evidence for the Donatist use of imperial courts in the 390s and early 400s in conversation with earlier Donatist juridical appeals in the period 313-394 and later Donatist legal strategies at the Conference of 411. It is shown that when the evidence for these Donatist legal maneuvers are given their full weight, certain influential arguments by W.H.C. Frend and Maureen Tilley for an antagonistic Donatist posture towards Rome and imperial power as persecutor and antichrist must be rethought.

Much of the scholarship to date addressing Augustine and coercion has attempted to contextualize and explain the controversial reception of Augustine's justification of coercion through the centuries by seeking to identify a change of mind in Augustine or discern his evolving attitude on this subject. However, this thesis follows on from the recent arguments of Erika Hermanowicz and shows (*pace* Emilien Lamirande and Peter Brown) that searching for a change of mind or an evolving attitude in Augustine on coercion overlooks the extent to which Donatist precedents and Theodosian anti-heresy legislation (*CTh.* 16.5.21) had already shaped and organized the contours of Augustine's thought on coercion by the early 390s. Therefore, it is argued that Augustine's practical juridical strategy in the 390s and early 400s culminated in his decisive argument to imperial authorities that the Donatists were heretics as members of an inveterate schism (*schisma inveteratum*, *c. Cresc.* 2.7).

The thesis begins with a chapter examining the judicial precedents for Donatist appeals found in the rescripts of Gallienus in 261/262 to the Alexandrian church and the Antiochene church's appeal to Aurelian in 272. Then, the appeal to Constantine from the party of Majorinus in 313 is explored on the basis of these juridical precedents, and it is shown that the initial policy

of Majorinus's party sought to preserve a certain degree of distance between the emperor and the church. This is proved from the language of the initial appeal, which requests that Constantine appoint judges (*iudices*) from Gaul rather than asking Constantine to adjudicate the matter himself. However, it is also demonstrated that with the death of Majorinus and the election of his successor, Donatus of Casae Nigrae, the Donatist party's reluctance to seek imperial adjudications quickly faded, and the remainder of the fourth century was marked by repeated Donatist appeals for imperial intervention, including appeals to Count Taurinus (ca. 340) and the emperors Constans (346) and Julian (362). It is argued here that the evidence for Donatist conduct with respect to imperial authority seriously challenges scholarly assessments of the Donatist Church in the work of scholars, including Frend and Tilley, who argued for a much more consistently antagonistic posture towards Rome and imperial power on the part of the Donatists.

Instead, it is shown that such scholarly assessments of Donatist posture towards Rome and imperial power as agents of antichrist were largely premised on interpretations of the Donatist martyr *acta* depicting imperial persecutions of Donatist martyrs. It is argued that the Donatist martyrdom accounts do not provide a full picture of the Donatist posture towards imperial authority and must be placed in conversation with the Donatist appeals of 313, ca. 340, 346, 362 and the use of imperial soldiers loyal to Firmus (ca. 373/5) and Gildo (397/398). Moreover, it is shown that rhetorically purist Donatist assertions, such as the Donatist *mandatum* at Carthage in 411 ('Januarius and the other bishops of the catholic truth that suffers persecution but does not persecute' *Gesta Carth.* 3.258) must be interpreted in a context where Donatist leaders had repeatedly appealed for coercive measures against their opponents and had carried out coercive measures against their own schismatics and Catholics pursuant to the Theodosian legislation (*CTh.* 16.5.21), including fines, beatings with clubs, and the confiscation of property (eg. Possidius, *v. Aug.* 12, Augustine, *c. litt. Petil.* 2.83.184, *epp.* 29.12, 105.2, 88.6, *c. Cresc.* 3.48).

Additionally, in both the first and second chapters, a new synthesis of the evidence for the social and economic situation in Numidia during the so-called 'revolts' of Firmus (ca. 373/5) and Gildo (397/398) is established. In particular, the recent work of Brent Shaw is used to challenge

earlier characterizations of both leaders as social revolutionaries by Frend and it is argued that Firmus and Gildo are both better understood as imperial usurpers. The significance of this new synthesis of the evidence is shown to lie in the fact that Donatist alliances with both imperial usurpers evince the Donatists' continued reliance on imperial power during the late fourth century. The role of the so-called circumcellions in North African ecclesiastical politics is also examined and it is shown that objections by certain Donatists to the circumcellions' actions carrying out policies of coercion began a process of fragmenting the Donatist Church, which would ultimately render it ineffective when confronted by the Edict of Unity of 12 February 405 (*CTh.* 16.5.38). The second chapter also explores the repeated efforts of the Donatists to persuade North African judges to categorize the schismatic Maximianists and Rogatists as heretics pursuant to the Theodosian anti-heresy legislation of 392 (*CTh.* 16.5.21) in the years immediately following the Council of Bagai of 394.

The third chapter goes on to argue that the splintering within the Donatist Church on the issue of coercion was more significant for the fate of Donatism than has been recognized in Donatist scholarship to date. Here it is argued that the fragmentation of the Donatist Church becomes apparent in the evidence which reflects conflicting Donatist postures towards the 'Arian' Goths and Vandals, as is demonstrated *inter alia* from certain of Augustine's letters (e.g., *epp.* 44, 185), the Donatist recension of the *Liber genealogus*, the records of the Council of 484, and Victor of Vita's *History of the Vandal Persecution*. Chapter four then explores the extent to which Donatist opportunism towards imperial power shaped Augustine's own legal arguments and tactics on coercion. In particular, this chapter examines the juridical weight of Augustine's allegation that the Donatists were the first party to appeal to Rome. This chapter looks at Augustine's polemic through the lens of Roman laws, which punished false claims, most especially laws concerning *calumnia* and the equivalent ecclesiastical precedent for dealing with false allegations of *traditio* established at the Council of Arles in 314. This chapter uses that juridical background to explain the importance of certain procedural maneuvers by both parties, including the strategies employed at the Conference of Carthage in 411. Carrying on the arguments from the previous chapters, chapter five examines Theodosian anti-heresy legislation and argues that it was the anti-heresy legislation of 392 (*CTh.* 16.5.21) that formed the juridical

backbone of Augustine's polemic against the Donatists through the 390s and into the early 400s. More specifically, it is shown how prior Donatist legal strategies coupled with the Theodosian legislation shaped Augustine's legal categorization of the Donatists as heretics. Further, it is shown that Augustine's tactic of labeling the Donatists as heretics departed from the opinion of the Catholic polemicist, Optatus, and instead carried on the precedent established by the Donatists themselves.

This thesis demonstrates that the Donatist Church was just as comfortable as Augustine in utilizing the judicial mechanisms of imperial power. It also shows that the Donatists' juridical tactics against their own schismatics and the Catholic party formed the legal precedents for Augustine's own arguments in favor of coercion against the Donatists. Augustine's success against the Donatists and his authority for later generations have meant that his justifications for coercion have been remembered, often at the expense of the Donatists' own words and conduct. This thesis seeks to remedy that paucity of research on the Donatists' legal strategies by treating them on their own terms and by carefully examining their own conduct with respect to imperial authorities. All of this recontextualizes ongoing scholarly discourse on late antique ecclesiastical recourse to imperial power, because it shows that this most controversial aspect of Augustine's thought actually came from the Donatists themselves.

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ABBREVIATIONS

<i>AugStud</i>	<i>Augustinian Studies</i>
<i>ChHist</i>	<i>Church History</i>
CCSL	Corpus Christianorum Series Latina
<i>CPL</i>	<i>Clavis Patrum Latinorum</i>
CSEL	Corpus Scriptorum Ecclesiasticorum Latinorum
<i>CTh</i>	Theodosian Code
<i>DOP</i>	<i>Dumbarton Oaks Papers</i>
<i>JAAR</i>	<i>Journal of the American Academy of Religion</i>
<i>JECS</i>	<i>Journal of Early Christian Studies</i>
<i>JEH</i>	<i>Journal of Ecclesiastical History</i>
<i>JLA</i>	<i>Journal of Late Antiquity</i>
<i>JTS</i>	<i>Journal of Theological Studies</i>
<i>HTR</i>	<i>Harvard Theological Review</i>
LCL	Loeb Classical Library
NPNF	Nicene and Post-Nicene Fathers
<i>PCBE</i>	<i>Prosopographie chrétienne du Bas-Empire</i>
PL	Patrologia Latina
<i>PLRE</i>	<i>Prosopography of the Later Roman Empire</i>
<i>Rec Aug</i>	<i>Recherches augustiniennes</i>
SC	Sources chrétiennes
<i>ZAC/JAC</i>	<i>Zeitschrift für Antikes Christentum / Journal of Ancient Christianity</i>

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Introduction

Donatus Magnus famously asked: ‘What has the emperor to do with the church?’¹ Scholars of Donatism might rightly answer: ‘A great deal, especially if the church has appealed directly to that emperor.’ However, generations of scholars have not answered the question at all. Instead, they have allowed Donatus’s rhetorical question to stand unchallenged. Largely, that neglect has been due to the opinion of W.H.C. Frend that for the Donatists² and Catholics,³ ‘An appeal to the Emperor, whether Constantine or Julian, as the source of justice was considered a reasonable procedure.’⁴ Frend quickly went on to add the opinion that, ‘Neither Optatus of Milevis nor

¹ *Quid est imperatori cum ecclesia?* Optatus, 3.3. (Editions specifically cited are listed in the Bibliography.)

² Despite much controversy surrounding the use of polemical descriptors such as ‘Donatist’ to describe the dissident North African Church, this thesis will continue to use this traditional term rather than a term like ‘dissident church’ as used by Brent D. Shaw, *Sacred Violence: African Christians and Sectarian Hatred in the Age of Augustine* (Cambridge: Cambridge University Press, 2011). For a discussion of the nature of this controversy over the name given to the Donatists by their Catholic opponents, see especially Aaron Peltari, ‘Donatist Self-Identity and “The Church of the Truth”’, *Augustinianum* 49.2 (2009): 359—69. Peltari demonstrates that at the Conference of 411 the Donatists sought to be called ‘The Church of the Truth’. See also the Donatist Cresconius’s contention that the Donatists preferred to be called ‘Donatians’ (Augustine, *c. Cresc.* 2.2). Throughout this thesis, the term ‘Donatist’ will be used to describe actions by bishops and individuals who were members of the Donatist Church. However, it must be acknowledged that the Donatist Church was far from uniform throughout its history. Moreover, the actions of Donatist bishops in Numidia and Proconsularis were rarely the collective sort of actions one sees on the part of the Catholic party led by Augustine and Aurelius of Carthage starting in the 390s.

³ As with the term ‘Donatist’, this thesis will use the conventional title ‘Catholic’ rather than terms such as ‘Caecilianist’ that were used by W.H.C. Frend in *The Donatist Church: A Movement of Protest in Roman North Africa* (Oxford: Clarendon Press, 1952).

⁴ *Ibid.*, 188. Frend’s attitude towards the Donatists’ appeals is consistent with his broader argument that the Donatist Church represented a movement of social protest against the imperial Roman government. This has been seriously nuanced by subsequent scholarship on the North African context. See, for example, Shaw, *Sacred Violence*, chapters 14—15 and Appendix F on the circumcellions, dispelling Frend’s characterization of the circumcellions as the armed wing of the Donatist party in alliance with Firmus and Gildo. See also Tilley’s helpful cautions about over-reading the social-revolutionary aspects of the controversy, in Maureen A. Tilley, ‘Redefining Donatism: Moving Forward’, *AugStud* 42 (2011): 21—32.

Augustine was able to make much progress with arguments to the contrary.⁵ And with these dismissively cursory statements about Donatist appeals to Rome, Frend relegated one of the most important aspects of the Donatist controversy to scholarly obscurity. Indeed, since the publication of *The Donatist Church* in 1952, scholars of Donatism have followed Frend's lead in almost completely ignoring the evidence that the Donatist Church repeatedly appealed to Rome throughout the entire course of the Donatist controversy.⁶ Moreover, since the publication of her *Donatist Martyr Stories* in 1996, the opinion of Maureen Tilley, that it was actually the fourth-century Donatists who revived the second- and third-century Christian Church's 'motif of the State as antichrist',⁷ has held considerable sway among theologians studying the Donatist Church.⁸

⁵ Frend, *Donatist Church*, 188.

⁶ Most influentially, in the work of Maureen A. Tilley, especially her *Donatist Martyr Stories: The Church in Conflict in Roman North Africa*, Translated Texts for Historians 24 (Liverpool: Liverpool University Press, 1996), and *The Bible in Christian North Africa: The Donatist World* (Minneapolis: Fortress, 1997).

⁷ Tilley, *Donatist Martyr Stories*, xiii. For other works of Tilley's which evince this same perspective on Donatism, see 'Scripture as an Element of Social Control: Two Martyr Stories of Christian North Africa', *HTR* 83 (1990): 383—97; 'The Ascetic Body and the (Un)Making of the World of the Martyr', *JAAR* 59 (1990): 467—79; 'Dilatory Donatists or Procrastinating Catholics: The Trial at the Conference of Carthage', *ChHist* 60 (1990): 7—19. Frend is slightly more guarded, but has the same basic perspective on the Donatists' antagonistic posture towards imperial power. See, for example, *Donatist Church*, 171, and Frend's more nuanced observation that 'it would be mistaken to see in the Donatism of the mid-fourth century a consciously anti-Imperial movement with political aims. The Donatists had no hesitations about appealing to Julian for the restoration of their Church. Imperial officials were numbered among their sympathizers, and one of them at least, Flavian, the *Vicarius Africae* in 377, was a communicant. Hostility was directed not against the Empire, but against the "world" generally, the domain ruled over by Satan, and represented by corrupt officials, oppressive landowners, "sons of traditores".' The distinction Frend makes between the 'empire' and 'world' represents an unresolved tension in his work. *Contra* Frend's identification of Nichomachus Flavianus as a Donatist 'communicant', it is more reasonable to see him as a Donatist sympathiser given that he was a pagan and holder of several priesthoods. (*PLRE* 1, 347—9 ('Virius Nicomachus Flavianus 15'); Augustine, *Ep.* 87.8).

⁸ For a recent example of this same approach, see David Wilhite, *Ancient African Christianity: An Introduction to a Unique Context and Tradition* (London: Routledge, Taylor & Francis, 2017).

It is a state of affairs that would be impossible if the Donatists' own appeals to Rome had been given their proper place in the scholarship on Donatism. Indeed, an ecclesiastical community that repeatedly appealed to Roman authorities throughout the whole course of its existence could not possibly be seen as markedly distinct from any other opportunistic fourth- and fifth-century ecclesiastical party. For the fourth and fifth centuries are replete with examples of ecclesiastical parties and leaders who could applaud the emperor when he supported their side and vehemently declaim against him as an antichrist when he persecuted them.⁹ Unfortunately for the state of Donatist scholarship today, the Donatist Church is still considered an outlier from the broader contours of fourth- and fifth-century ecclesiastical politics.¹⁰

This thesis challenges that special assessment of Donatism and argues instead that the incontrovertible evidence shows that the Donatist Church had the same ambivalent and opportunistic posture towards Roman power as any other fourth- and fifth-century ecclesiastical party. In particular, the evidence shows that the Donatists repeatedly appealed to Rome and that they were favorable towards Rome when Roman authorities favored them; they described Rome as antichrist when Rome did not favor them. It is a story that could be told about many other movements in the fourth and fifth centuries. But it is not the story that has been told about Donatism to date.

Frend's dismissiveness of the Donatist appeals also obscured another important aspect of the evidence for the Donatist controversy that has become more clear with the work of classicists

⁹ Perhaps the best two examples of this sort of political opportunism in the broader ecclesiastical milieu are Athanasius and Ambrose. For Athanasius' opportunism, see Timothy D. Barnes, *Athanasius and Constantius: Theology and Politics in the Constantinian Empire* (Cambridge, MA: Harvard University Press, 1993). Neil McLynn demonstrates the same opportunistic tendency in Ambrose: *Ambrose of Milan: Church and Court in a Christian Capital*, Transformation of the Classical Heritage 12 (Berkeley: University of California Press, 1994). A proper view of the Donatists would not necessarily lead one to believe that they were any more opportunistic than any other party in the fourth century, but rather that they were just as politically opportunistic as any other fourth-century party.

¹⁰ Many of the contributions to *The Uniquely African Controversy: Studies on Donatist Christianity*, ed. Anthony Dupont, Matthew Alan Gaumer, and Mathijs Lamberigts (Leuven: Peeters, 2015), evince just such a perspective, as the title of the volume reflects.

in the decades since *The Donatist Church* was published in 1952.¹¹ Frend believed Augustine and Optatus did not make ‘much progress’ with their arguments about the Donatist appeals because the Donatists did not contest the evidence for the appeals. However, since Frend published *The Donatist Church*, classicists like T.D. Barnes and, more recently, Brent Shaw have critically examined the evidence for Donatism and have bemoaned the cloud of uncertainty which looms over any careful examination of the sources for Donatism.¹² Largely, this is due to the fact that so much of what is known about the Donatists comes only from their opponents and was vigorously contested by the Donatists themselves. The Donatists challenged Catholic evidence about the name of their leader,¹³ the name of their community,¹⁴ the date of the Donatist Council of Cirta,¹⁵ and many other pieces of evidence introduced at various points against the Donatists by the

¹¹ The work of Serge Lancel in compiling, editing, and translating into French the acts of the Conference of Carthage in 411 began in the early 1970s and has shed much light on one important aspect of the controversy. In particular, the *acta* reflect just how many pieces of evidence that scholars had taken for granted the Donatist party disputed. See, S. Lancel (ed.), *Actes de la Conference de Carthage en 411*, 4 vols., SCh 194, 195, 224, 373 (Paris: du Cerf, 1972—91).

¹² For a detailed discussion of the bewildering state of the evidence for the origins of Donatism, see especially T.D. Barnes, ‘The Beginnings of Donatism’, *JTS* 26 (1975): 13—22, 1975 (reprinted in Barnes, *Early Christianity and the Roman Empire* (London: Variorum, 1984), no. 8).

¹³ For further discussion of the dispute over the name of Donatus by Donatist leaders at the Conference of 411, see J.S. Alexander, ‘The Motive for a Distinction between Donatus of Carthage and Donatus of Casae Nigrae’, *JTS* 31 (1980): 540—7. Alexander shows that the Donatist leaders at Carthage in 411 claimed that Donatus of Casae Nigrae and Donatus of Carthage were different people in order to get out from under adverse rulings against Donatus of Casae Nigrae. Alexander argues convincingly that the two were the same person.

¹⁴ See Pelttari, ‘Donatist Self-Identity’.

¹⁵ On the self-incriminating records from the purported Donatist Council of Cirta, see A.H.M. Jones’s offer to the reader to ‘judge for himself whether the minutes of so incriminating a meeting are likely to have been taken or preserved’: *Constantine and the Conversion of Europe* (London: English Universities Press, 1949), 123.

Catholic party,¹⁶ but they did not challenge the Catholic evidence for their appeals to imperial officials. In this respect, Maureen Tilley's call for 'suspicion' towards Catholic sources is an appropriate and much-needed caution.¹⁷ For in so many instances, the extant polemical records include evidence that the authenticity of the juridical records used by the Catholic party against the Donatists was vehemently contested by the Donatists.¹⁸ Furthermore, on many points, the records concerning the Donatist schism were often introduced by Catholic polemicists many years after the events unfolded, oftentimes at a point when neither the Donatists nor the Catholics knew or remembered many of the details of the early stages of the controversy.¹⁹ Barnes's work on the origins of the Donatist controversy resulted in his damning comment that 'the polemic which still survives reveals that both later Donatists and their opponents were almost as ignorant

¹⁶ For further examples of challengeable judicial records, see Barnes' treatment of the dubious records for the exoneration of Felix of Aptunga in 315 when the witness against him was threatened with torture by a persecuting proconsul, and the proceedings before Zenophilus in 320 where two of the Donatists leaders, Silvanus of Cirta and Purpurius of Limata, were put on trial under suspicious circumstances for fraud, embezzlement, and *traditio*: Barnes 'Beginnings', 14--16.

¹⁷ See Tilley's 'A Methodological Preface' to *Bible*, 1—8, where this caution is repeated numerous times: 'To retrieve the story, one must be suspicious' (3). Tilley's caution is well-taken given the state of the evidence and centuries of scholarship taking polemical Catholic sources on Donatism at face value. However, the problem with a posture of suspicion is when suspicion of the reliability of the sources replaces one untenable reading of the texts with another. Reading between the lines to show that the opposite of what a Catholic source like Augustine said was actually the case at every point in the controversy is no more workable than assuming that everything Augustine said was true. For contrasting examples, see Brent D. Shaw, 'Augustine and Men of Imperial Power', *Journal of Late Antiquity* 8.1 (2015): 32—61; Geoffrey Grimshaw Willis, *Saint Augustine and the Donatist Controversy* (London: S.P.C.K, 1950).

¹⁸ See, for example, Augustine's discussions about Donatist allegations that Catholic documents were forgeries and Augustine's own claims about the authenticity of documents in the controversy: *c. Cresc.* 3.33, 3.66. For the authentication of legal documents in the late Roman context, see Heather MacNeil, *Trusting Records: Legal, Historical and Diplomatic Perspectives* (Dordrecht: Kluwer Academic, 2000).

¹⁹ See Shaw, *Sacred Violence*, Appendix B, on the confusion by all parties over the dating of the Donatist Council of Cirta when evidence was introduced at the Conference of 411. As Shaw wryly notes, Augustine volunteered to emend the date on the document with his own 'educated guess', a troubling fact.

of its beginnings as any modern investigator'.²⁰ Barnes's statement about the evidence for the origins of Donatism has been echoed in the skeptical opinion of classicists such as Brent Shaw who have written at some length about the unreliability of many of the extant sources for other periods of the Donatist controversy.²¹

But the one category of evidence that is largely an exception to this cloud of uncertainty is the Donatist appeals: the piece of evidence that Frend dismissed as self-evident and uninformative. For Frend, the fact that Donatist leaders did not contest the Catholic allegations that they had made these appeals, proved that Augustine and Optatus were not making progress with the claim. Seven decades of scholarship on Donatism since Frend's *The Donatist Church* have shown that it was actually the other way round. We now know that the Donatists contested nearly everything with which they were charged by the Catholic party. So the fact that we have no evidence for the Donatists' contesting this claim is profoundly significant. Moreover, while the argument here is partially an argument from silence, it is a compelling one under the circumstances. The Catholic polemical treatises against the Donatists consistently reflect disputes over evidence by offering at least the Catholic rejoinder to the allegations.²² But on the issue of

²⁰ Barnes, 'Beginnings'. 13.

²¹ See, for example, Shaw, *Sacred Violence*, Appendix B, on the origins of the Donatist controversy. See also Shaw's skeptical discussion of Catholic allegations about the 'circumcellions', *Sacred Violence*, chapters 14, 15, and Appendix F. Shaw's treatment of the primary sources throughout *Sacred Violence* demonstrates just how difficult it is to ascertain anything about the Donatists when so much of what we know about them comes from their opponents. Shaw's own skeptical treatment of sources on Donatism follows a history of memorable skepticism about some of these documents by classicists. See, for example, Barnes, 'Beginnings', and Jones, *Constantine*, cited above. See Peter Brown's comparison between Augustine's response to the Donatist controversy and litigation over a testamentary dispute: *Augustine of Hippo: A Biography*, new edn with an epilogue (Berkeley: University of California Press, 2000), 216. One thinks of a bitter dispute on the order of *Jarndyce and Jarndyce*. The comparison is especially apt in that both sorts of disputes are marked by signs that the parties have forgotten the underlying issues and can only remember that they do, in fact, hate each other.

²² For a humorous example of this, see the space that Augustine gives to the Donatist grammarian Cresconius' contention that the name '*Donatistae*' should actually be represented in the proper Latin form '*Donatiani*': *c. Cresc.* 1.2—2.3. We probably do not learn everything that Cresconius alleged, but the controversy is evident from Augustine's response.

the Donatist appeals, there is almost no record of any such contest over authenticity or factuality taking place.²³ This means the Catholic claims about the appeals were in fact working, *contra* Frend's assumption.²⁴ Moreover, it is likely that the Donatists were unable to contest the appeals because the appeals were transmitted by too many sources to be easily dismissed as forgeries by North African Catholics.²⁵

This thesis is about the Donatists' appeals and why the appeals took such a prominent place in Augustine's anti-Donatist polemic. It is offered in the hope that future studies of Donatism will give greater place to this one single aspect of the controversy that allows us to stand on firm evidential footing.

The classicist Erika Hermanowicz has shown the way forward in this regard, and in her *Possidius of Calama* in 2008 she took up the Donatist Church's appeals during the limited historical period from the 390s to the early 400s in the time of Possidius, Catholic Bishop of Calama.²⁶ In doing so, Hermanowicz compellingly demonstrated the evidence from the extant sources for the repeated Donatist appeals to imperial magistrates against their own schismatics, the Maximianists, during the 390s. In her work, Hermanowicz also convincingly showed how the

²³ The evidence for each of the appeals will be taken in turn through the first three chapters of this thesis. While the evidence is not equally compelling or clear for each appeal, the overwhelming consensus one gets from studying them in toto is that this was one aspect of the Catholic polemic to which the Donatists simply had no response.

²⁴ I made this argument in shorter form in a paper delivered at the British Patristics Conference in Birmingham in 2016. That paper, entitled 'Appealing to Antichrist: A Critical Examination of Donatist Juridical Appeals', is forthcoming later this year in *Studia Patristica*.

²⁵ As will be discussed at greater length in chapter one, most of the evidence for the early Donatist appeals was preserved by Optatus in his appendices, but much of it was then reproduced by Augustine, and introduced at the Conference of Carthage in 411. Eusebius also preserves evidence reflecting the appeals to Constantine in 313 and it would seem that the imperial archives had evidence for the Donatist appeal to Julian, allowing Honorius to have the appeal posted throughout North Africa in 405 along with the Edict of Unity in 405. Augustine and Possidius also both preserved their own records of Donatist appeals during the 390s and early 400s, and these will be addressed in chapter two. As will be discussed more fully in chapter three, the evidence for Donatist engagement with 'Arian' parties after Serdica and after the Vandal invasion is preserved in Hilary's and Victor's *Histories*.

²⁶ Erika T. Hermanowicz, *Possidius of Calama* (Oxford: Oxford University Press, 2008).

Donatist legal appeals of the 390s set the precedent for the Catholic party's arguments to Honorius' court, which culminated in the Edict of Unity of 12 February 405 (*CTh.* 16.6.4) and the decisive Conference of Carthage in June 411. However, Hermanowicz's work is necessarily limited in its scope and does not address Donatist appeals in the periods before or after Possidius' life. This is a large omission for a number of reasons. For one thing, the Donatist strategy of labeling the Catholics as heretics that Hermanowicz locates in the 390s can be seen in a close examination of the period before the 390s when the Donatists were already alleging that Catholics were heretics.²⁷ Thus, the period 313 to 391 is an absolutely critical point for discerning Donatist and Catholic legal strategy of the 390s and early 400s, but is largely untouched by Hermanowicz's work. Moreover, Hermanowicz does not adequately address the question looming over current studies of Donatism regarding the fate of Donatism after Augustine's death.²⁸ This thesis argues that the Donatists' opportunism and fragmentation evinced in the period 313 to 430 are vital for evaluating the evidence for a Donatist alliance with the Vandals as is hinted at in Victor's *History of the Vandal Persecution* (3.71). It is hoped that this thesis will provide a broader perspective on the Donatists' appeals, as there are a number of

²⁷ Optatus, 1.10 – 1.12. This will taken up at greater length in chapter five.

²⁸ See also Tilley's comments on the dearth of research on Donatism after the death of Augustine in 'Redefining Donatism', especially her observation that in 'the "Donatism" articles (in *Encyclopedia of Early Christianity*, ed. Everett Ferguson [New York and London: Garland, 1990], 274–277; and *Encyclopedia of the Early Church*, ed. Angelo DiBerardino [New York: Oxford, 1992], 246–248), W. H. C. Frend makes no mention of Donatism after Augustine' (note 28). It is argued in chapter three of this thesis that understanding Donatist relationships with 'Arian' parties during the fourth and early-fifth centuries is vital for understanding the fate of Donatism after Augustine. This pattern of re-examining what is known about the Donatists' trinitarian theology has recently been set in motion by Adam Ployd in the following works: *Augustine, the Trinity, and the Church: A Reading of the Anti-Donatist Sermons* (New York: Oxford University Press, 2015); 'The Power of Baptism: Augustine's Pro-Nicene Response to the Donatists', *J ECS* 22.4 (2014): 519–40; and 'The Unity of the Dove: The Sixth Homily on the Gospel of John and Augustine's Trinitarian Solution to the Donatist Schism', *AugStud* 42 (2011): 57–77. Willis had already obliquely noted that, 'It had been suggested from time to time that the Donatists were heretical and had Arian tendencies in their Trinitarian doctrine.' In support of this, he cited Augustine, *Serm.* 183, 5.9; *Ep.* 185, 1.I; and Jerome., *De vir. illustr.*, 93: Willis, *Augustine*, 129.

points that a broader perspective on Donatist appeals bring to our understanding of the Donatist tactics of the 390s, early 400s, and into the Vandal period of North African history.

Brent Shaw's *Sacred Violence* has also partially addressed the Donatists' legal maneuvers during the fourth and early-fifth centuries.²⁹ He forcefully re-examines a great deal of the currently available evidence with respect to the North African context of the Donatist Church, paying special attention to the culture of violence in North Africa in the fourth and early-fifth centuries. Shaw's magisterial volume is thorough in its consideration of the aspects of the controversy that held the author's interest.³⁰ However, as the title would indicate, Shaw's attention in *Sacred Violence* is much more closely focused on the manner in which the

²⁹ See, for example, Shaw, *Sacred Violence*, chapters 3 and 4, which attempt to take up the juridical aspects of the controversy.

³⁰ Shaw's impressive knowledge of the North African context for Donatism is reflected in his scholarly corpus, which has been largely focused on North African society and politics. See Brent D. Shaw, *Rulers, Nomads, and Christians in Roman North Africa* (Aldershot: Variorum, 1995), and *Environment and Society in Roman North Africa: Studies in History and Archaeology* (Aldershot: Variorum, 1995). See also 'Body/Power/Identity: Passions of the Martyrs', *J ECS* 4.3 (1996): 269—312.

ecclesiastical leadership on both sides of the controversy utilized violence³¹ in pursuit of their aims. As such, the precise judicial mechanisms employed by both sides are not given focused attention. In this regard, although the breadth of knowledge evident in *Sacred Violence* is undeniable, Shaw also demonstrates a tendency to read events exclusively through the lens of ‘violence’ with little concern for other factors that might have been at play, such as the precise

³¹ Shaw’s incautious and all-encompassing use of the connotatively loaded word ‘violence’ for all exercises of force in North African ecclesiastical politics can be seen in other recent works on the subject, such as Michael Gaddis, *There Is No Crime for Those Who Have Christ: Religious Violence in the Christian Roman Empire*, Transformation of the Classical Heritage 39 (Berkeley: University of California Press, 2005). There is a major methodological problem with using a term like ‘violence’ for juridically sanctioned coercion, such as was often utilized by all parties in the context of the Donatist controversy. That problem is that it tends to put into the same undifferentiated category a large number of activities that could be differentiated by degrees of violence and the lawfulness of the authority sanctioning them. Thus, in Shaw’s corpus, a traditional, violent game between rural villages (*Sacred Violence*, chapter 1, ‘This Terrible Custom’), a bloody judicial interrogation (‘Judicial Nightmares and Christian Memory’, *JECs* 11.4 (2003): 533—63), and the punishment of a ‘lawless’ circumcellion (‘Augustine and Men of Imperial Power’) are all placed a bit too neatly into the category of ‘violence’. The blurring of possible distinctions and the *a priori* assumption that all exercises of force, in any context, lawfully sanctioned or not, are to be considered simply as ‘violence’ is one of the greatest weaknesses in the works that float downstream from Foucault. Of course, the opposite alternative is just as problematic, as can be seen in recent efforts by certain theologians to follow Augustine’s own polemically flavored language and describe the coercive measures he advocated against the Donatists by a more (unintentionally) Orwellian term like ‘correction’. See, for example, R. Bowlin, ‘Augustine on Justifying Coercion’, *Annual Meeting of the Society of Christian Ethics* 17 (1997): 49—70. Bowlin makes a number of helpful points in this article, but the severity of punishments like beating a Donatist with rods (Augustine, *Ep.* 133.2) makes it difficult for modern readers to appreciate how Augustine’s concerns with coercion were essentially the same as ours, as Bowlin attempts to argue. For an excellent treatment of Augustine’s own terminology of coercion, see Peter Iver Kaufman, ‘Augustine’s Punishments’, *HTR* 109.4 (2016): 550—66. See also, G. Geltner, *Flogging Others: Corporal Punishment and Cultural Identity from Antiquity to the Present* (Amsterdam: Amsterdam University Press, 2016). For the remainder of this thesis, the term ‘coercion’ will be used intentionally as it seems to best walk the line between the reductionism of ‘violence’ and the (unintentional) Orwellianism of a term like ‘correction’.

judicial mechanisms being employed by the various parties.³² Moreover, Shaw at times has a tendency to analogize aspects of the controversy to contemporary situations, a point that reviews of his work have helpfully identified and critiqued.³³ The focus of this thesis is on the precise judicial mechanisms employed by the Donatists in their North African context and the exact manner in which their use of those mechanisms in that particular North African context gave Augustine his own precedent for both appealing to Rome and for responding to Donatist claims to be the Church of the persecuted.³⁴

There is another aspect of Shaw's work that this thesis proposes to carry forward and also nuance in certain respects. Throughout his *Sacred Violence*, Shaw goes to great lengths to place a bishop like Augustine into his violent North African context and to show that Augustine was in

³² Shaw, *Sacred Violence*, 1: 'Our interest is directed as much to the question of how acts of sectarian violence were thought about and represented in words as it is to the actual threats, beatings, burnings, and killings. In this light, it is perhaps disappointing that our narrative diminishes rather than exalts. Events claimed as peasant rebellions and revolutionary social struggles turn out, on closer inspection, to be smaller and meaner things. The principal actors were moved by the logical, if fulfilling, credulities of religious faith and by not much more. What I have encountered is a history of hate – a story of intimate dislike that was motivated by the profound love for one's own people, beliefs, communities, and traditions.' For another example of this approach in Shaw's work, see Shaw's assessment of Augustine's motivations with respect to his appeals for clemency in the Donatist controversy: Shaw, 'Augustine and Men of Imperial Power'. Shaw's assessment of Augustine's motivations throughout *Sacred Violence* is quite consistent with this perspective but often misses the extent to which Augustine was acting both as a bishop and ecclesiastical judge, both as an advocate for his party and beliefs (something Shaw helpfully addresses) and as a cautious judge enforcing judgements against a recalcitrant party (something Shaw consistently overlooks).

³³ For Tilley's response to Shaw's perspective in *Sacred Violence*, see Maureen A. Tilley, 'Sacred Violence: African Christians and Sectarian Hatred in the Age of Augustine by Brent D. Shaw (review)', *J ECS* 21.2 (2013): 291—3. One of Tilley's critiques in this review is that Shaw occasionally relies too much on contemporary scenarios of religious violence in places such as Northern Ireland, Lebanon, and the Magreb (293).

³⁴ While issues of violence and coercion will be addressed in this thesis, the focus is on the Donatist appeals.

so many ways just ‘a preacher in North Africa’.³⁵ This thesis accepts Shaw’s premise in so far as Augustine must be contextually situated to understand his posture on issues such as coercion and appealing to the Roman authorities. Indeed, it is the argument of this thesis that Augustine’s later influence has actually obscured how unoriginal Augustine’s strategy of appealing to Roman authorities for coercion really was. As this thesis will show, with respect to Augustine’s use of the Donatist appeals in his anti-Donatist polemic, the extraordinary thing one finds when one examines the Donatist appeals is just how many of Augustine’s own arguments were repackaged Donatist arguments, how many of Augustine’s tactics were retellings of the Donatists’ own.

Efforts to understand the Late Roman North African context and Donatism on their own terms are of fairly recent vintage. For centuries, the scholarly debates about the Donatists centered on ensuring that one’s own ecclesiastical party could not fairly be labeled as ‘Donatist’.³⁶ Well into the twentieth century this was still the dominant model for Donatist scholarship. Even up to the year 1950, eminent and learned scholars of Donatism such as

³⁵ Leading to one astute reviewer’s observation that ‘Shaw often introduces quotations with phrases such as, “A preacher in North Africa once said ...” or “In an acerbic sermon ..., the preacher warns ...”. But in virtually all these cases, he quotes Augustine’: ‘Brent D. Shaw, *Sacred Violence: African Christians and Sectarian Hatred in the Age of Augustine*’, reviewed by Clifford Ando, *Bryn Mawr Classical Review*, 2012.8.30.

³⁶ See Matthew Alan Gaumer’s discussion of the largely pejorative use of the term ‘Donatist’ in the medieval and early-modern periods in ‘Donatists Abound!!!’, in *The Uniquely African Controversy*, ed. Dupont *et al.*, 29—70. One also encounters it indirectly in Cardinal Newman’s famous declaration in the *Apologia pro Vita Sua* that in the Long Vacation of 1839, ‘I saw my face in that mirror, and I was a Monophysite’ (John Henry Cardinal Newman, *Apologia pro Vita Sua, Being a History of His Religious Opinions*, [uniform edition] (London: Longmans, Green, and Co., 1908), 114. Newman’s stated fear that his Anglicanism might smack of Monophysitism actually came in the context of his study of Augustine and the Donatist controversy. ‘[T]hey were like the “Tolle, lege,—Tolle, lege,” of the child, which converted St. Augustine himself. “Securus judicat orbis terrarum!” By those great words of the ancient Father, interpreting and summing up the long and varied course of ecclesiastical history, the theory of the *Via Media* was absolutely pulverized’ (117). See also the translations of certain of Augustine’s anti-Donatist writings in Library of Nicene and Post-Nicene Fathers, series I, volume 4. These translations were accompanied by introductions setting out fairly straightforward readings of the Donatist controversy that took the Catholic sources at face value.

Geoffrey Willis³⁷ were willing to take Augustine at his word when it came to most of the facts about Donatism.³⁸ Thus, Shaw's emphasis can be seen as a welcome corrective to many of the treatments of Augustine on coercion.

³⁷ Tellingly for the state of Donatist scholarship at the time, in his preface Willis bemoans the fact that only one major work on Donatism had been released in the English-speaking world in the fifty years prior to his book. Thus, despite its flaws of taking Augustine's story about Donatism too much at face value, Willis's work did represent the first attempt to address the Donatist controversy in four decades in English-language scholarship. The prior work was W.J. Sparrow Simpson, *Saint Augustine and African Church Divisions* (London: Longmans, Green, 1910). His treatment of the Donatists takes a strongly theological focus and treats Augustine as a reliable source for his fairly negative treatment of the Donatists' ecclesiology and emphasis on purity when set against Augustine's greater realism. That said, on the issue of coercion, he expresses a High Church Anglican's reserved distaste for Augustine's support for imperial coercion, and while he attempts to set Augustine's justification in context, he does not otherwise seek to offer justifications for it. See also Paul Monceaux, *Histoire littéraire de l'Afrique chrétienne depuis les origines jusqu'à l'invasion arabe*, vol. 7, *Saint Augustin et le donatisme* (Paris: Ernest Leroux, 1923).

³⁸ This predilection to take at face value the Catholic sources on every aspect of the Donatist controversy is perhaps best seen in Willis's chapter addressing the issue of appeals for coercion and, in particular, the decision by the Catholic Church in North Africa to request that the imperial authorities coerce their Donatist opponents in order to return them to the Catholic fold. In this section, Willis seems to defend this most controversial of matters as a fairly straightforward decision by Augustine, necessitated and justified by the lawless violence of the Donatists and their allies, the circumcellions. Willis, *Augustine*, 127—43. Such a straightforward view has been often contradicted by the voluminous (and bitterly contested) scholarship on the issue of coercion since that time, which perhaps explains why Willis's book is not heavily referenced in more recent works on the Donatists. For one cogent contradiction of Willis's assessment, see Oliver O'Donovan's important observation that 'The whole case could have been argued quite plausibly as a question of civil disorder, which was clearly within the competence of the secular authority to suppress, but Augustine does not take this route': Oliver O'Donovan and Joan Lockwood O'Donovan, *From Irenaeus to Grotius: A Sourcebook in Christian Political Thought 100—1625* (Grand Rapids: Eerdmans, 1999), 108. That Augustine did not simply argue the case on grounds of civil order is one of the biggest problems for attempts to explain Augustine's justifications for coercion in terms of modern, liberal political ideals. For a recent effort in that regard nonetheless, see Michael Lamb, 'Augustine and Republican Liberty: Contextualizing Coercion', *AugStud* 48.12 (2017): 119—59.

In particular, far too many scholarly efforts to address Augustine's appeals for coercion have been focused on discerning an evolving posture towards coercion in Augustine.³⁹ Largely, this effort has been focused on discerning when things 'went wrong' as the youthful and optimistic Augustine of the 380s became a part of a repressive Roman social order in the 390s and early 400s. Thus, identifying the precise moment when Augustine changed his mind on the issue has been important to many scholars interested in Augustine's wider thought on the

³⁹ See very importantly, Emilien Lamirande, *Church, State, and Toleration: An Intriguing Change of Mind in Augustine* (Villanova, PA: Augustinian Institute, Villanova University, 1975). The young Peter Brown's article from 1964, 'St. Augustine's Attitude to Religious Coercion', *JRS* 54 (1964): 107—16, considered, like Lamirande's work, Augustine's 'attitude' towards religious coercion and has been very significant in the field of English-language scholarship. Indeed, it has received near-universal attestation in subsequent literature on the subject of Augustine and coercion. On the whole, Brown's treatment of Donatism and Augustine over the last five decades (such as in his collection of essays *Religion and Society in the Age of Saint Augustine* (London: Faber and Faber, 1972)) has consistently focused on Brown's repeated efforts to explain Augustine's support for coercion in terms of seeing it as an evolving 'attitude' rather than a 'doctrine' (efforts by Brown which to date have met with mixed success). Indeed, one could argue that the very high calibre of Brown's other scholarly work since the 1960s has saved him from the potential critique of near incomprehensibility on the issue of coercion. See, for example, the opening paragraphs of Brown's 1964 article in which he quickly alternates between praising Augustine's 'coherence' and 'candour' on the subject of coercion and sternly cautioning the reader against erecting any kind of 'doctrine' from Augustine's thought on the matter. Further, the distinction between an 'attitude' and a 'doctrine' is not at all clear from Brown's treatment of the issue, nor is the necessity of such a distinction evident either. Brown's own goal of discerning a 'change of mind' in Augustine on coercion was part of Brown's own scholarly project of tracing the changes from the young to the old Augustine. In this same vein, Brown's otherwise excellent biography, *Augustine of Hippo*, also addressed the Donatist controversy at some length, focusing on Augustine's response to his Donatist opponents and setting forth an explanation for the evolution of his thought on the subject of coercion by the imperial authorities: *Augustine of Hippo*, first edn (London: Faber and Faber, 1967), 229—39. In the appendix to his revised edition of 2000, Brown forthrightly acknowledges that new evidence from the so-called 'Divjak letters' had caused him to re-evaluate his attempts to establish a clear dichotomy between the young and old Augustines: a tendency which might explain the difficulties in understanding Brown's own early treatment of Augustine's evolving 'attitude' towards religious coercion: *Augustine of Hippo* (2000), 466. For a more recent, and better treatment of this issue, see Serge Lancel, *Saint Augustine*, tr. Antonia Nevill (London: SCM, 2002), 275—86 (original French edn Paris: Fayard, 1999).

relations between Church and Empire.⁴⁰ The intuition that Augustine changed his mind on the matter of coercion is a good one and is backed up by Augustine's own account of events.⁴¹ Additionally, given the influence of Augustine's justification for coercion on subsequent ages, it is understandable that most of the scholarly attention to date has focused on Augustine as the one who set a legal precedent for appealing to the state for coercion, and has largely neglected the extent to which Augustine was himself following a legal precedent set by the Donatists themselves. However, this thesis demonstrates that neglecting the place of the Donatists' own appeals in Augustine's polemic overlooks the most interesting and unstudied thing about Augustine on judicial coercion: just how unoriginal Augustine's position actually was. Moreover, efforts to discern a change of mind in Augustine that ostensibly took place in the early 400s have

⁴⁰ This is especially evident in the work of the eminent scholar of Augustine and Gregory the Great, Robert Markus, whose classic book, *Saeculum: History and Society in the Theology of St. Augustine* (Cambridge: Cambridge University Press, 1970; 2nd edn, 1988) takes up this issue of coercion at some length. The careful reader of his work gets the sense that Markus would have preferred not to address the issues of Donatism and coercion because they cut against the grain of his argument in *Saeculum* that Augustine supported a religiously neutral category of political life. While the extent of Markus's explanation is broader than the scope of this thesis, the basic thrust of his argument is twofold. First, Markus emphasizes Augustine's reluctance to support coercion. Second, Markus contends that for Augustine, a ruler who coerced religious schismatics did so in the ruler's role as member of the church and not in his role as a political authority. The potentially strained logic of Markus's latter contention, one that he candidly acknowledges might not have made any functional difference at the time, is beyond the scope of this introduction and for a fuller discussion, see Markus, *Saeculum*, 144—53. Of course, this overview necessarily fails to do full justice to a scholar whose work changed the contours of studies on Augustine's political thought for many years, but the limited scope of this thesis precludes a more detailed look at Markus's broader corpus. See, for example, the following books by Markus where he returns to these issues: *Augustine: A Collection of Critical Essays* (Garden City, NY: Anchor, 1972); *Sacred and Secular: Studies on Augustine and Latin Christianity* (Aldershot: Variorum, 1994); *Christianity and the Secular* (Notre Dame, IN: University of Notre Dame Press, 2006); and the following articles: 'Christianity and Dissent in Roman North Africa: Changing Perspectives in Recent Work', in Derek Baker (ed.), *Schism, Heresy and Religious Protest*, *Studies in Church History* 9 (Cambridge: Cambridge University Press, 1972), 21—36; 'Tempora Christiana Revisited', in Robert Dodaro and George Lawless (eds), *Augustine and His Critics: Essays in Honor of Gerald Bonner* (London: Routledge, 2000), 201—13.

⁴¹ See especially, *Ep.* 93.5.17, where Augustine specifically says to Vincentius that he changed his mind on coercion. This will be treated at much greater length in chapter five.

likewise overlooked the extent to which the imperial legislation of 392 (*CTh*.16.5.21) had already shaped the contours of Augustine's thought on coercion as early as Augustine's first anti-Donatist writing in 392, when he was already thinking of schism and heresy somewhat interchangeably.⁴² This thesis demonstrates that when the imperial legislation of 392 and the precedents of the Donatists' own appeals are given their full weight, Augustine's decision to fully support coercion in the early 400s can be seen more as a practical juridical decision driven by the exigencies of the political and legal climate in North Africa that had been long shaped by the legislation of 392 and the Donatists' own utilization of that legislation against their own schismatics and the Catholic party. Thus, in this respect, this thesis is in line with and carries forward Shaw's effort to place Augustine into his own particular legal and political context in late Roman North Africa.

On the other hand, and in many ways *contra* Shaw, this thesis also notes the ways in which Augustine was uniquely successful in his strategy against the Donatists. As will be demonstrated, the Donatists were largely unsuccessful in making their appeals to Roman authorities throughout the course of the fourth and early-fifth centuries,⁴³ so much so that a case can be made that the Donatist appeals both started the controversy and brought it to an end, in

⁴² Augustine, *Ep.* 23.6 to Maximin, a Donatist bishop: 'If you perhaps do not want me to write these things to you, you must, my brother, pardon my fear. For I fear very much that, if I am silent and pretend nothing is wrong, others will also be rebaptized by you. I have, therefore, determined to pursue this cause to the extent that the Lord offers me the strength and ability, in order that all who are in communion with us may know from our peaceful discussions how much the Catholic Church differs *from heresies and schisms* and how much one should avoid the destruction to come for either the weeds or the branches that have been cut off from the vine of the Lord' (tr. Roland Teske, *Letters I — 99*, The Works of Saint Augustine, A New Translation for the 21st Century, ed. John E. Rotelle, II/1 (Hyde Park, NY: New City Press, 2001), 67; emphasis added). Augustine also uses the term 'heretics' in passing in *Ep.* 23.4.

⁴³ As will be demonstrated in chapter two, while the Donatists were successful in some respects in the 390s, their efforts actually tied them too closely to Gildo and resulted in the repression of Donatism in 405 and thereafter. Augustine's own treatment of the Donatists, as will be shown in chapters three, four, and five, was better calculated to bring the Donatists back into the Catholic fold and appears to have largely succeeded.

both cases with unfavorable rulings against the Donatists.⁴⁴ This causes one to wonder why Augustine was successful in winding down the controversy in favor of the Catholics when the Donatists ultimately were not successful in their same efforts against the Catholics. It is a point that Shaw does not adequately raise or answer in his work.⁴⁵ Moreover, Catholic attempts to impose anti-heresy legislation against the Donatists in the mid-390s before Augustine began to take a leading role in the dispute in the late 390s/early 400s were likewise unsuccessful for a number of reasons.⁴⁶ Augustine's carefully planned and implemented appeals to Ravenna in the early 400s, on the other hand, were far more successful. And while the Vandal invasion of 429 disrupted Augustine's project of uniting North Africa under the auspices of the Catholic communion, the Edict of Unity in February 405 and the Conference of Carthage in June 411 were absolutely decisive events in the defeat of the Donatist Church.

This thesis asks how Augustine succeeded when the Donatists' and his fellow Catholics' efforts in the same regard had failed. It is shown that the Catholic strategy led by Augustine followed a balanced and carefully nuanced juridical negotiation process in which enough was alleged about the Donatists to get the attention of the imperial authorities, but not so much that the Donatists would be backed into a corner or that a repression on the scale of that under the imperial *comes* Leontius and the *dux* Ursacius (in 317) or the imperial notaries Paul and Macarius (in 347) might ensue. Thus, while this thesis shows that Augustine's arguments and

⁴⁴ For example, chapter one of this thesis demonstrates that it was Constantine's involvement in the controversy in 312/313 that ignited the schism. And chapter two shows that it was Primian's strategy of the 390s that brought it to an end. For other treatments of both, see Lancel, *Saint Augustine*, 166; see also Matthew Alan Gaumer, 'The Election of Primian of Carthage: The Beginning of the End of Donatist Christianity?' *ZAC/JAC* 16.2 (2012): 292–310.

⁴⁵ This is likely because of Shaw's effort to place Augustine into context in a way that he might be understood as a 'preacher in North Africa.' See note 37 above.

⁴⁶ It should also be noted here that there were a number of reasons why the Catholics were unsuccessful in appealing to Roman magistrates in the 390s, perhaps most importantly that Gildo was favoring the Donatists at that time. One can witness Augustine's increasing influence through the 390s in the *Concilia Africae*. See especially J.E. Merdinger, *Rome and the African Church in the Time of Augustine* (New Haven: Yale University Press, 1997), which throughout shows how Augustine's influence at the councils in Carthage increased consistently through the 390s and into the early 400s.

tactics were largely gleaned from the Donatists, a point which situates Augustine as another preacher in North Africa taking part in North African ecclesiastical politics consistent with Shaw, it also demonstrates *contra* Shaw the extent to which Augustine was able to put his own distinctively juridical imprint on the Donatist tactics and strategies. Augustine did this most importantly by treating the Donatists as a judge might treat a recalcitrant defendant: knowing just when to apply further pressure and when to permit the potential penalties looming over that defendant to act as a motivation for compliance.⁴⁷ It is further argued in what follows that Augustine's own background and experience in Roman law and experience serving as an ecclesiastical judge eminently prepared him to prosecute and implement a carefully calibrated juridical strategy such as the one he employed against the Donatists.⁴⁸ Thus, it is demonstrated, *contra* Shaw, that the Catholic party's case against the Donatists in the early 400s succeeded precisely because its leader and mastermind was not just 'a preacher in North Africa': it was Augustine.

Along the way, a number of important points are made about the Donatists' theological opportunism and flexibility towards other dissident parties they perceived as potentially helpful in their battles with their Catholic opponents. In this respect, the limited evidence for Donatism following Augustine's death has largely obscured the fact that the Donatists had a long history of making common cause with both imperial officials and heterodox theological parties, inside and

⁴⁷ I have argued this elsewhere in an early theological reflection on Augustine's view of juridical judgement presented at the Oxford Patristics Conference in 2015. That article, entitled 'The Necessities of Judgment: Augustine's Juridical Response to the Donatists' and is forthcoming in *Studia Patristica* and is scheduled to appear later this year.

⁴⁸ For a detailed treatment of Augustine's judicially flavored rhetorical style, see Caroline Humfress, 'Controversialist: Augustine in Combat', in Mark Vessey (ed.) *A Companion to Augustine* (Chichester: Wiley-Blackwell, 2012), 323—35.

outside of North Africa.⁴⁹ None of the recent scholarly work to date on post-430 North Africa has adequately addressed the central question that any discussion of Donatism in the age of the Vandals must ask: did the Donatists ever make common cause with the invading Vandals or see the ‘Arian’ Vandals as an ‘enemy of an enemy’? This exploration in this thesis of Donatist political and theological opportunism through the entire course of the Donatist controversy, from its outset in the early 300s until 430, contributes to answering this question with a cautious ‘yes’. And it is hoped that further studies will take on board the evidence for Donatism’s consistent political and theological opportunism when asking and answering this question about Donatism’s relationship with the Vandals.

Organizationally, each chapter will first examine the state of the evidence for the topic addressed in that chapter. Throughout the thesis, matters of theology will be addressed only in passing, as this is not primarily a theological treatment of Donatism. Rather, it is a critical examination of the Donatists’ legal appeals and the place those appeals held in Augustine’s anti-Donatist polemic. Moreover, because the focus of this thesis is on Donatist appeals to Rome, many aspects of the Donatists’ own writings, such as recently identified Donatist sermons⁵⁰ and the martyr *acta* translated by Maureen Tilley,⁵¹ will not be closely examined in this thesis. Likewise, because this thesis is focused on the role that the Donatists’ appeals played in Augustine’s anti-Donatist polemic, the voluminous anti-Donatist corpus of Augustine will not be addressed in full.⁵² Rather, Augustine’s anti-Donatist polemic has been examined for places

⁴⁹ The dearth of scholarship on Donatism in the period following Augustine has been noted by Tilley among others, and the recent work of Lesley Dossey and Robin Whalen has contributed to a much better understanding of Donatism after 429/430. See, Lesley Dossey, *Peasant and Empire in Christian North Africa*, Transformation of the Classical Heritage 47 (Berkeley: University of California Press, 2010); Robin Whalen, *Being Christian in Vandal Africa: The Politics of Orthodoxy in the Post-Imperial West*, Transformation of the Classical Heritage 59 (Berkeley: University of California Press, 2017; Whalen, ‘African Controversy: The Inheritance of the Donatist Schism in Vandal Africa’, *JEH* 65.3 (2014): 504—21.

⁵⁰ See especially, Dossey, *Peasant and Empire*.

⁵¹ Tilley, *Donatist Martyr Stories*.

⁵² An updated list of all primary and secondary writings about Donatism can be found at <http://donatism.org>, an online dynamic bibliography by Paola Marone at Sapienza Università di Roma.

where Augustine utilized the Donatists' legal appeals to frame his arguments against them and to shape his own legal strategies *vis-à-vis* the emperor and Roman officials.⁵³ Relatedly, the scholarship on Late Roman North African archaeology is not relevant to this examination of Donatist appeals and thus is not given attention.⁵⁴

The focus of this thesis is on the evidence for Donatist appeals and Augustine's use of them, which means that the majority of citations will be to the extant primary sources that give us a clear picture of the Donatists' legal appeals and how Augustine used those appeals himself. Thus, while there is a great deal of secondary literature on Donatism and Augustine, it will be primarily discussed in the footnotes and only explicitly addressed at points where it is relevant for establishing a point of significant scholarly debate on these issues.

The first three chapters of this thesis are concerned with the evidence for the Donatists' juridical appeals and attempted alliances, namely the Donatists' repeated appeals to imperial officials in the period before Augustine came to Hippo in 391 (chapter one), during Augustine's ecclesiastical career in North Africa (391—430; chapter two), and Donatist approaches to 'Arian' parties during the whole course of the controversy (chapter 3). The last two chapters then take up Augustine's use of the Donatists' appeals (chapter four) to defend Catholic appeals to Rome. In chapter four, it is shown that the Roman law of *calumnia* and the ancient legal principles establishing punishments for making a false claim shaped Augustine's repeated refrain against the Donatists that they themselves had appealed to Rome. In chapter five it is shown how the Theodosian anti-heresy law of 392 (*CTh.* 16.5.21) shaped Augustine's argument that the

⁵³ Although Augustine's voluminous theological arguments against the Donatists' theology of baptism, ecclesiology, and notions of clerical purity are not explored at any length in this thesis. For a still-excellent treatment of the theological aspects of Augustine's anti-Donatist writings, given from Augustine's perspective, see Willis, *Augustine*.

⁵⁴ For Donatist archaeology, see especially W.H.C. Frend, *Archaeology and History in the Study of Early Christianity* (London: Variorum, 1988); Lancel, *Actes*; Yvette Duval, *Loca Sanctorum Africae: le culte des martyrs en Afrique du IV^e au VII^e siècle*, 2 vols, Collection de l'École française de Rome 58 (Rome: École française de Rome, 1982); Brent D. Shaw, *Environment and Society in Roman North Africa: Studies in History and Archaeology* (Aldershot: Variorum, 1995) and *Rulers, Nomads, and Christians*. See also Shaw, 'Body/Power/Identity: Passions of the Martyrs'.

Donatists should be coerced as heretical members of an inveterate schism (*schisma inveteratum*, *c. Cresc.* 2.7), as they had repeatedly argued to imperial officials themselves against their own schismatics and the Catholic party. Chapter five also explores Augustine's legal tactics, asking why Augustine's strategy against the Donatists succeeded when the Donatists' own efforts and earlier Catholic appeals had largely failed.

The conclusion reached is that when it came to appealing to Rome for coercion, Augustine learned his strategies and rationales from the Donatists. But, like any good advocate, Augustine was able to turn the same strategies and tactics back against his Donatist opponents to great juridical effect. This is the story of those Donatist appeals and how Augustine used them to rewrite the story of Donatism and to recast the Donatists as a party of failed persecutors rather than the Donatist's own self-proclaimed identity as the party of the pure. It is a story that needs to be told if we are to understand the Donatists on their own terms in a manner that is faithful to the best evidence for the controversy. However, it is also a story that yields certain surprising and troubling conclusions: most especially, the verdict that the most controversial aspect of Augustine's thought in the context of the Donatist controversy actually came from the Donatists themselves.

CHAPTER ONE

APPEALING TO ANTICHRIST: DONATIST APPEALS TO ROME BEFORE AUGUSTINE

This chapter critically examines Donatist appeals for imperial adjudication during the period from 313 to 391. Starting with the appeal from the party of Majorinus to Constantine in 313 and concluding with the election of Primian as the Donatist bishop of Carthage in 391, the chapter examines each appeal with a view to discerning the Donatist posture towards Roman power during this period. Against the earlier assertions of Frend and Tilley about the Donatists' ideologically rigid view of Rome and worldly powers as antichrist, the discussion concludes that the Donatist posture towards Roman authority during this period was consistently opportunistic and pragmatic. It is shown that while the initial appeal from the party of Majorinus sought to keep some distance between the Church and the Emperor, the Donatist posture from that time forward was entirely opportunistic and pragmatic and evinced a consistent willingness to accept the emperor's adjudication on ecclesiastical matters. As such, the evidence examined in this chapter demonstrates that scholarly assessments of Donatist posture towards Rome and imperial power as agents of antichrist which were largely premised on interpretations of the Donatist martyr *acta* and passions have been read in isolation from the Donatists' own actions, in particular, the Donatist legal strategy of repeatedly appealing to Rome. Moreover, by combining new evidence on the failed imperial usurpations of Firmus (ca. 373/5) and Gildo (397/398) with the earlier Donatist legal appeals of 313, ca. 340, 346, and 362, the chapter presents new evidence for the consistent nature of Donatist opportunism towards imperial authority throughout the course of the fourth century. This shows, *contra* Tilley *et alios* that the Donatist movement did not simply evolve away from its stridently anti-imperial stance.

1.1 The Evidence for Donatist Appeals to Rome before Augustine, 313—391

The key sources for our knowledge of Donatist appeals during this period are Eusebius' *Ecclesiastical History*, Optatus of Milevis' *Against the Donatists*, Ammianus Marcellinus' *Res Gestae*,⁵⁵ and certain letters and anti-Donatist treatises of Augustine (especially *Ep.* 93, *Ep.* 185, and *contra Cresconium*). Eusebius and Optatus transmit the records of certain Donatist appeals during this period, while the writings of Ammianus and Augustine provide evidence of them.⁵⁶

As noted in the introduction, any treatment of the Donatist controversy must begin with the recognition that nearly all of the evidence for the Donatist Church can be disputed. And it has been. Indeed, hardly any piece of evidence survives whose authenticity or reliability was not challenged in the fourth and fifth centuries and which has not been challenged in recent scholarship, especially in the recent work of Brent Shaw. Accordingly, our confidence about being able to discern what 'really happened' in so many aspects of the Donatist controversy should be tempered by the possibility of multiple explanations for each piece of evidence. Furthermore, scholars of Donatism who have called for 'suspicion' with respect to Catholic sources are right to counsel caution about taking polemical writings by Catholics such as Optatus and Augustine at face value.⁵⁷

However, there is one notable exception to the confusing state of the evidence for Donatism, and it is the subject of this chapter and of this thesis more broadly. The evidence for the Donatist appeals to imperial authorities proffered in this chapter was unchallenged by the Donatists and remains largely uncontroverted in the scholarship on Donatism. This is significant, especially given that the Donatists disputed nearly every facet of the Catholic case against them.⁵⁸ But the Donatists were unable to challenge the Catholic allegation that it was the Donatists themselves who had first appealed to Constantine. Likewise, the Donatists were unable

⁵⁵ For the context of the appeals.

⁵⁶ Certain of the Donatist martyr *acta* will also be referenced throughout.

⁵⁷ Tilley, *Bible*, 3.

⁵⁸ See Introduction, notes 15 and 16.

to meaningfully contest the subsequent appeals to Taurinus, Constans, Julian and Firmus that will be discussed in this chapter. This is of great importance for further treatments of the Donatists in a controversy shrouded with doubt about the authenticity and reliability of so many of the other extant sources. The argument of this chapter is that these fourth-century Donatist appeals must take a much more prominent role in scholarly discussions of Donatism, given their uncontested nature amidst a sea of otherwise unreliable and challengeable evidence.

1.2 The Donatist Appeals to Constantine in 313

The controversy that came to be known as the ‘Donatist schism’ began in the context of the Diocletian persecution when the bishop of Carthage, Mensurius, prohibited Carthaginian Christians from bringing food⁵⁹ to Christians held in prison by the proconsul Anulinus. The subsequent death of Mensurius before 306 and the election of Mensurius’ archdeacon, Caecilian, in early 306⁶⁰ led to a division in the Carthaginian church between the supporters of Caecilian,

⁵⁹ For a more detailed discussion of these events, see the *Acts of the Abitinian Martyrs* in Tilley, *Donatist Martyr Stories*, 25—50, and for the sources, *PCBE* 1, *Afrique*, 748—9 (‘MENSVRIVS 1’). Much has been made of the class issues allegedly at stake in the Donatist controversy, perhaps most famously in Frend’s *Donatist Church*, which labeled the Donatists as ‘a movement of social protest’. A.H.M. Jones’ article asked the critical question in its title: ‘Were Ancient Heresies National or Social Movements in Disguise?’ (*JTS* 11 (1959): 280—98). Jones offered a qualified ‘no’ to the question about the Donatists. He is right to be cautious. However, here we see a fascinating example from the earliest stage of the controversy where a bishop seems to have struck a separate deal with the proconsul to hand over heretical texts in order to escape persecution. Whatever one makes of the social/class issues at stake in the later periods of the controversy, here is a clear example of a class division between Mensurius and the martyrs (whom Mensurius disparages as those who wanted to live on church assistance while in prison or live like ‘fighting-cocks’ (Augustine, *Brev. Coll.* 3.13.25)). Mensurius chose to enforce his decision by posting his deacon, Caecilian, and others outside the prison to keep food from being brought to the martyrs. *Acts of the Abitinian Martyrs*, in Tilley, *Donatist Martyr Stories*, 45.

⁶⁰ Shaw has convincingly demonstrated a date before 306, perhaps as early as 303, for Mensurius’ death and a date of early 306 for the contested election of Caecilian (Shaw, *Sacred Violence*, 812—16). These ‘early’ datings follow previous work on the chronology of events, especially by Barnes (‘Beginnings’, *contra* the ‘late’ datings of the death of Mensurius and election of Caecilian to 311/312 by Frend, *Donatist Church*, 1—24, and Tilley, *Donatist Martyr Stories* xi—xv).

who took a moderate and conciliatory line towards the imperial officials, and the more radical supporters of another of Mensurius' deacons, Majorinus, who had the support of a woman by the name of Lucilla.⁶¹ There were allegations of *traditio*⁶² on all sides.⁶³ But the schism did not break out into full force until the emperor Constantine became involved in the controversy. Instead, the

⁶¹ Optatus, 1.16, describes Lucilla as '*potens et factiosa femina*'; see also Optatus, 1.19 (other sources in *PCBE* 1, *Afrique*, 649 ('LVCILLA 1')). Text of Optatus cited throughout from Sancti Optati Milevitani *Libri vii*, ed. Karl Ziwsa, CSEL 26 (Vienna: F. Tempsky, 1893).

⁶² On the complex meanings of the term '*traditor/traditores*' and the implications of handing oneself and sacred vessels over to the enemy, see Tilley, *Donatist Martyr Stories*, ix.

⁶³ A number of the most important early leaders in the Donatist Church were themselves confessed and convicted *traditores*. At least, they were if one believes the records that were later introduced by Catholic sources. See, for example, the *acta* of the Council of Cirta, in which all of the fourteen Numidian bishops present confess to *traditio*: Optatus, 1.14. See also the legal proceedings in which Silvanus of Cirta and Purpurius of Limata were convicted of *traditio* or similar charges, in the appendix to Optatus: translation in 'Proceedings before the Consular Zenophilus', Appendix 1, in Optatus, *Against the Donatists*, tr. M.J. Edwards, Translated Texts for Historians 27 (Liverpool: Liverpool University Press, 1997), 150—69. These records reflect that in 320, a deacon in the city of Cirta by the name of Nundinarius fell out with the bishop of the city, Silvanus, and Silvanus apparently had him stoned. Nundinarius brought the case before Zenophilus, the consular of Numidia. The fragmentary *acta* preserved in Optatus reflect that Silvanus tried to silence Nundinarius because of what his deacon knew of him from the persecutions under Diocletian. The outcome of the judicial proceeding before Zenophilus was that Silvanus was found guilty of *traditio*, and also found guilty of the theft of vinegar from the temple of Serapis along with Purpurius. He was also found guilty of ordaining a priest for money, and it was demonstrated that monies given by Lucilla during the election of Majorinus were embezzled rather than being given to the poor. All of this seems a bit too convenient to the Catholic side, and here Barnes' caution that 'authenticity does not necessarily entail veracity' is well taken (Barnes, 'Beginnings', 14). By contrast, the most important initial allegation against Mensurius was that he was consecrated by Felix of Aptunga, who was alleged to be a *traditor*, but Felix was exonerated in a judicial hearing held in 315. See 'The acquittal proceedings of Felix Bishop of Abthugni', Appendix 2, in Optatus, *Against the Donatists*, tr. Edwards, 170—80. All of these proceedings are highly suspect, and were disputed by Donatists then and have been disputed by scholars since. The goal of this thesis is not to cut this Gordian knot of legal evidence, but rather to do something else entirely: to ground assertions about Donatist conduct and attitudes *vis-à-vis* imperial authorities on the legal records that were not seriously disputed then or since.

parties seem to have achieved a certain *modus vivendi* in the period between 306 and 312.⁶⁴ It was a time when active persecutions were not ongoing in North Africa.

The key ingredient that becomes evident through the entire course of the Donatist controversy is that imperial intervention and the favoring/disfavoring of sides to the conflict often served to foment bitterness between the parties that would not have otherwise existed. Indeed, this could serve as a summary for the entirety of Donatist/Catholic relations into the next century. But one should not assume that the same animosity was evident in the period from 306 to 312.

This *modus vivendi* of 306 to 312 was shattered when Constantine became interested in the controversy. On 28 October 312 Constantine defeated Maxentius and became sole ruler in the West. He immediately acted to establish a direct link between himself and Christian bishops throughout his realm. When it came to North Africa, Constantine seems to have been particularly concerned to establish a direct relationship with the bishop of Carthage. The next several years of the Donatist controversy can be understood as the after-effects of Constantine's need to discern to which of the Christian bishops in Carthage the property confiscated under his predecessors should be returned.

In the winter of 312 or, more likely, early 313, Constantine acted in favor of Caecilian and ordered that church property confiscated during the persecution be restored and that the sum of 3,000 *folles* be awarded to Caecilian.⁶⁵ Constantine's letter described Caecilian's party as ministers of the 'lawful and most holy catholic religion'.⁶⁶ Constantine's decision to recognize Caecilian was probably influenced by his relationship with Ossius of Cordoba, as Ossius is directly mentioned in Constantine's letter to the North African bishops.⁶⁷ If true, it would not be

⁶⁴ Perhaps the best analog for this period would be the early stages of the Novatian schism when Novatian and Cornelius had both been consecrated as bishops of Rome in 251.

⁶⁵ Eusebius, *Historia Ecclesiastica*, 10.6

⁶⁶ Eusebius, *H.E.*, 10.6.1. Translations of the *H.E.* from Eusebius, Bishop of Caesarea, *The Ecclesiastical History and the Martyrs of Palestine*, tr. Hugh Jackson Lawlor and John Ernest Leonard Oulton, vol. 1, *Translation* (London: Society for Promoting Christian Knowledge, 1927).

⁶⁷ Eusebius, *H.E.*, 10.6.2

the only time that Ossius would influence imperial policy in favor of the party of Caecilian.⁶⁸ Consistent with this policy of imperial favor, in the spring of 313 Constantine also exempted from the *munera* those clergy who were in direct communion with him.⁶⁹ Although many details are unknown, this action was probably the direct cause of the Donatist appeal to Constantine. In particular, Constantine's decision to offer imperial favor to those bishops who were in direct communion with him had made it vital for a party seeking imperial favor and financial support to be recognized as the 'Catholic' party in Carthage. So the party of Majorinus acted to obtain that imperial recognition. But, as will be shown, Majorinus' party still initially sought to keep a certain distance between itself and the emperor. Constantine's own concern for unity is evident throughout the entirety of his active involvement in the controversy from 312 to 321 and is also apparent in his much later letter of 330 to the Catholic bishops.⁷⁰ Given the situation on the ground in which one party had been conciliatory and moderate towards imperial officials, it is not hard to see why Constantine would have favored the party of Caecilian. Unfortunately, Constantine's actions have caused a number of problems for scholars dating the election of Caecilian. The decisive conduct of Constantine in 312/313 has led many scholars to date the disputed election of Caecilian incorrectly to the same general period of 311/312.⁷¹ This dating is based largely on the assumption that the schism Constantine learned about and acted on must have occurred only recently. But the evidence does not support such an assumption. Nothing in the language of Constantine's initial correspondence indicates whether the schism was recent or

⁶⁸ Ossius' involvement in the so-called 'Macarian persecution' will be discussed later in this chapter and also in chapter three. Frend believed that Ossius was himself tainted with charges of *traditio* before leaving Spain and becoming a part of Constantine's court in 312. See Frend, *Donatist Church*, 145 (citing much later Donatist allegations to this effect in Augustine, *contra Epistulam Parmeniani*, 1.4.7 and 1.5.10).

⁶⁹ Eusebius, *H.E.*, 10.6.2

⁷⁰ 'Constantine to the Numidian bishops', Appendix 10, in Optatus, *Against the Donatists*, tr, Edwards, 198—201.

⁷¹ Frend, *Donatist Church*, 1—24, and Tilley, *Donatist Martyr Stories*, xi—xv. Mandouze says only, 'Après la mort, en 311/312, de Mensurius, C. ... est choisi pour lui succéder' (*PCBE* 1, *Afrique*, 165—75, at 166 ('CAECILIANVS 1')).

long-standing. What is more likely is that the election of Caecilian was recent news to Constantine rather than recent news to the Carthaginian Christians.

The Initial Appeal to Constantine

The appeal, ‘A document of the Catholic Church containing charges brought against Caecilian by the party of Majorinus’, was lodged with the proconsul, Anulinus,⁷² probably in the spring of 313. The surviving text of the appeal retained by Optatus reads:

We petition you, Constantine, best of emperors, since you are of upright stock, as your father did not carry on the persecution in company with the other emperors and Gaul was immune from this outrage, seeing that in Africa there are dissensions between us and other bishops: we petition that your piety should make haste to have judges given to us from Gaul. Given by Lucian, Dignus, Nasutius, Capito, Fidentius and other bishops of Donatus’ party.⁷³

The Judicial Precedents in the Appeals to Gallienus and Aurelian

Possible precedents for an ecclesiastical party appealing to an emperor can be found in the prior century. In particular, plausible precedents for the appeal of the party of Majorinus to Constantine can be found in the rescripts of the emperors Gallienus and Aurelian. Eusebius preserves a rescript (ca. 261/262) from the immediate aftermath of the Valerianic persecution in

⁷² *PLRE* 1, 78—9 (‘ANVLLINVS 2’).

⁷³ Optatus, *Against the Donatists*, 1.22, tr. Edwards: *rogamus te, Constantine optime imperator—quoniam de genere iusto es, cuius pater inter ceteros imperatores persecutionem non exercuit, et ab hoc facinore immunis est Gallia, nam in Africa inter nos et ceteros episcopos contentiones sunt—petimus ut de Gallia nobis iudices dari praecipiat pietas tua. datae a Luciano, Digno, Nasutio, Capitone, Fidentio’ et ceteris episcopis partis Donati* (Ziwsa). See also the notes by Mark Edwards on the textual issues with this passage (Optatus, *Against the Donatists*, 22—3), and Barnes’ discussion of the wording of the appeal in ‘Beginnings’, 20—1. The petition was attached to a report of Anulinus to Constantine, dated 15 April 313: on the date, see Timothy D. Barnes, *The New Empire of Diocletian and Constantine* (Cambridge, MA: Harvard University Press, 1982), 240—1.

which Gallienus returned ecclesiastical property to the church in Alexandria.⁷⁴ The property had been confiscated during the persecutions of his father, Valerian. Eusebius likewise mentions another rescript from Gallienus in the same period which permitted Alexandrian Christians to have access to cemeteries.⁷⁵ Given the normal machinations of Roman law, such a rescript is highly unlikely to have been issued by the emperor without a specific request (*libellus*) from the church in Alexandria.

A decade later, around the year 272, the emperor Aurelian received an appeal from the faction of the church in Antioch opposed to Paul of Samosata. Paul had been notionally deposed in a synod of 267/268 but retained possession of the basilica.⁷⁶ Eusebius relates that among other misdeeds Paul had built a throne for himself, seduced women, taught the congregants to sing songs to him, and taught that Jesus was not fully God.⁷⁷ In his position as bishop of Antioch, Paul may⁷⁸ have had the support of a powerful friend, Zenobia of Palmyra.⁷⁹ Around the year 272, possibly following Aurelian's successful recapture of Antioch from Zenobia, a faction of the Antiochene church appealed to Aurelian. Eusebius states that:

⁷⁴ Eusebius, *H.E.*, 7.13.1—2.

⁷⁵ Eusebius, *H.E.*, 7.13.3.

⁷⁶ Eusebius, *H.E.*, 7.27—30

⁷⁷ Eusebius, *H.E.*, 7.30

⁷⁸ See Pat Southern, *Empress Zenobia: Palmyra's Rebel Queen* (London: Hambledon Continuum, 2008), 86, and Ted Kaizer, 'From Zenobia to Alexander the Sleepless: Paganism, Judaism and Christianity at Late Roman Palmyra', in *Zeitreisen: Syrien, Palmyra, Rom. Festschrift für Andreas Schmidt-Colinet zum 65. Geburtstag*, ed. Beatrix Bastl *et al.* (Vienna: Phoibos, 2010), 113—23.

⁷⁹ Zenobia is a fascinating study in her own right, and her defeat at the hands of the Emperor Aurelian happened at roughly the same time as this appeal to Aurelian. Ongoing scholarly discussions about whether Zenobia and Paul were allied with each other must include a discussion of this appeal and Aurelian's judgement in response to the appeal. Aurelian's apparently disinterested decision to refer the appeal to the bishop of Rome makes it likely that he did not have a strong personal opposition to Paul, something that would not be the case if he knew that Paul had been in alliance with Zenobia. For further discussion, see Southern, *Empress Zenobia*, 86.

as Paul refused on any account to give up possession of the church-building, the emperor Aurelian, on being petitioned, gave an extremely just decision regarding the matter, ordering the assignment of the building to those with whom the bishops of the doctrine in Italy and Rome should communicate in writing. Thus, then, was the aforesaid man driven with the utmost indignity from the church by the ruler of this world.⁸⁰

As it is recorded by Eusebius, Aurelian's rescript makes communion with the bishop of Rome the key test for determining which party had a right to the church property in Antioch. It also established the emperor in a role as arbiter of church property. It would become evident that the party of Majorinus had some initial concerns about giving Constantine or the bishop of Rome too much power. That becomes evident in the precise manner in which the party of Majorinus appealed to Constantine.

In the broadest of terms, the party of Majorinus' appeal to Constantine seems to have followed the judicial precedents set by the rescripts of the emperors Gallienus and Aurelian to the Christians in Alexandria and Antioch. Most obviously, this was a group of Christians appealing to an emperor, and the ostensible subject of the appeal concerned ecclesiastical property. In this case, the party of Majorinus evidently sought recognition from Constantine about who would control the property to be returned to the imperially recognized 'Catholic' party in North Africa and be exempted from the *munera*.⁸¹ However, it should be noted that the party of Majorinus did not appeal to Constantine to make the decision himself, as the church in Antioch and probably the church in Alexandria had done. Rather, the party of Majorinus asked for Constantine to send them judges (*iudices*) from Gaul.⁸² Whether the judges requested were

⁸⁰ Eusebius, *H.E.*, 7.30.19 (tr. Lawlor—Oulton).

⁸¹ While the appeal of the party of Majorinus does not explicitly mention ecclesiastical property, the action of Constantine exempting clergy in communion with him from the *munera* (Eusebius, *H.E.*, 10.6.2) makes it very likely that the party of Majorinus was seeking Constantine's official recognition in order to be exempt from the *munera*.

⁸² The phrase is, '*de Gallia nobis iudices dari*' (Optatus 1.22 (Ziwsa)).

ecclesiastical or civil is unclear from the text.⁸³ However, Constantine's decision to appoint bishops as ecclesiastical judges makes it likely that all parties understood the nature of the request and that it was for ecclesiastical judges who were bishops.⁸⁴

For his part, in his initial response to the appeal, Constantine seems to have both partially followed the precedent of the emperor Aurelian and partially departed from that precedent. This becomes especially evident when his order is placed alongside the rescript of Aurelian. That said, given the limited evidence for other instances of imperial involvement in Christian property disputes, the direct dependence of Constantine on this precedent as opposed to other non-extant precedents is somewhat speculative. In any event, Constantine seems to have followed Aurelian's precedent by ordering that the matter be determined with the assistance of the bishop of Rome, Miltiades. And in doing so, he confirmed the place of the bishop of Rome in determining not just the right to property, as in the case of Aurelian, but also the relationship of other churches with the emperor. In particular, Constantine required the proconsul Anulinus to send Caecilian to Rome, accompanied by ten supportive bishops and ten who were opposed to him. Constantine also ordered that the parties were to be judged by a group of bishops: Miltiades (bishop of Rome), Reticus of Autun (Gaul), Maternus of Cologne (Gaul), and Marinus of Arles (Gaul). Another man, named Marcus, was also involved in the case, but details about him are otherwise

⁸³ Barnes ('Beginnings', 20) translates *iudices* as 'arbitrators' and argues convincingly, *contra* Frend's assumption that the Donatists were here invoking the 'secular arm' (Frend, *Donatist Church*, 147), that 'the logical structure of the petition surely implies that the Donatists were thinking specifically of Gallic bishops as arbitrators. Constantine, at least, seems to have construed their request in this sense' (21). This request for *iudices* to be sent from Gaul rather than asking for Constantine to adjudicate the matter himself reflects that Majorinus was more skeptical of imperial assistance than his successors would be. It should be noted that Majorinus also had the financial support of a powerful backer in the person of Lucilla. On the monies given by Lucilla in support of Majorinus' election, see 'Proceedings before the Consular Zenophilus', in Optatus, tr. Edwards, 156—7, 166—9. For his part, in the absence of a neutral arbiter during the period 306—312, Caecilian likewise seems to have pursued a 'live and let live' policy with respect to Majorinus. Neither of them would have had the choice to involve imperial authorities until Constantine became involved as such a tactic would have only risked further persecution under imperial policy which still rendered their religion technically illicit.

⁸⁴ Following Barnes' analysis in 'Beginnings'.

unknown.⁸⁵ Thus, Constantine's response acceded to the Donatist request for judges from Gaul in part. But he did not send judges to the parties in North Africa as requested. Rather, he ordered the parties to come to Rome. By making Rome the key to discerning imperial favor for the North African parties, Constantine followed Aurelian's precedent, but also departed from the specifics of the request from the party of Majorinus. Moreover, Miltiades was not a judge from Gaul, as the party of Majorinus had requested, but rather a North African living in Rome.

Constantine's decision here seems to represent an attempt both to accede to the request of Majorinus' party and to follow judicial precedents established by Aurelian and Gallienus. That is, he partly assented to the party of Majorinus' request for judges from Gaul, but also involved the bishop of Rome, Miltiades, in the decision and ordered the parties to come to Rome.

Constantine wrote directly to Miltiades instructing him to hear the case and on 30 September 313 Miltiades opened proceedings on the matter.⁸⁶ The proceedings were held on the Lateran in the house of Constantine's wife, Fausta.⁸⁷ But, instead of following Constantine's instructions to the letter, Miltiades followed normal ecclesiastical procedure⁸⁸ and appointed a number of Italian bishops to hear the matter: fifteen of the eighteen bishops convened to hear the case came from Italy rather than Gaul as requested by Majorinus' party, and only three of the bishops came from Gaul.⁸⁹ The Donatist appeal to Constantine did not allege that Miltiades was a *traditor*, but it strongly implied it by asking for *iudices* from Gaul rather than for Miltiades to adjudicate the dispute. For his part, Miltiades' conduct in 'stacking the court' with judges from Italy shows that he was calling the Donatists' bluff. If they believed he was a *traditor*, they could

⁸⁵ 'Marcus is otherwise unknown' (Frend, *Donatist Church*, 147). It is probable that he was a bishop from Gaul in that all of the other bishops Constantine ordered to hear the case, except for Miltiades, were from Gaul, as the party of Majorinus had requested in the appeal to Constantine.

⁸⁶ On dating, see Frend, *Donatist Church*, 148.

⁸⁷ Optatus, 1.23.

⁸⁸ Note the synod of sixty bishops convened in Rome in 251 to deal with the Novatus affair (Eusebius, *H.E.* 6.43.1 and 21—22).

⁸⁹ Optatus, 1.23; Frend, *Donatist Church*, 148.

make the allegation openly and risk him still being tasked with the adjudication. But, if the Donatists refused to make the allegation openly, then he would follow normal procedure.⁹⁰

Before the trial could be held in the summer of 313, Majorinus died and Donatus of Casae Nigrae was elected to replace Majorinus. Donatus of Casae Nigrae appeared for the trial before Miltiades.⁹¹ The death of Majorinus may explain why neither party appeared with the ten supporting bishops as ordered by Constantine. The death of Majorinus also probably threw the Donatist party into disarray, while Caecilian probably would have seen the proceedings as a formality on the way to his confirmation as the sole recognized Catholic bishop of Carthage. Little is known of Donatus of Casae Nigrae before he succeeded Majorinus. Three sessions were held before the tribunal chaired by Miltiades, at the end of which Donatus was condemned for rebaptism and Caecilian was confirmed as the Catholic bishop of Carthage.⁹²

The Second Donatist Appeal to Constantine

Following the adverse ruling of the tribunal led by Miltiades, Donatus and his supporters appealed again to Constantine, alleging that Miltiades was a *traditor* himself, that evidence against Caecilian's consecrator Felix of Aptungi had not been heard, and that their judges had not been from Gaul as they requested. The text of the appeal is lost, but the events surrounding it are recounted in Optatus.⁹³

Miltiades then died on 11 January 314, and Constantine seems to have reconsidered his prior support for Caecilian. It is possible that Constantine's hesitation was partly due to the fact that Miltiades had failed to follow his orders precisely regarding a council of bishops from Gaul. What is probable is that the Donatist party was making gains on the ground in North Africa as

⁹⁰ For evidence of the Donatists' allegations against Miltiades, see Augustine, *ad Catholicos Ep.*, 18.46; *c. Cresc.* 3.61.67.

⁹¹ Following the chronology of events described by Frend, *Donatist Church*, 150—1.

⁹² Augustine, *Ep.* 43.5.14—15.

⁹³ Optatus, 1.25. See Frend's discussion of the evidence for this appeal and the dating/order of Constantine's letters responding to the Donatists. Frend, *Donatist Church*, 150. Importantly, the fact that the appeal was made is not contested.

well, which would make it difficult to enforce a ruling that was tainted with charges that the one presiding was himself a *traditor*. So Constantine agreed to the request of Donatus' party and ordered that the case should be heard in Gaul, at Arles, in August of 314 and presided over by Marinus, bishop of Arles, with representatives from other provinces as well.⁹⁴ Here Constantine is clearly acceding to the Donatist request for adjudication from judges in Gaul. However, the Council at Arles also ruled against the party of Donatus and prohibited the practice of rebaptism that the Donatists' leader was identified with. In particular, Canon 9 of the Council of Arles reads:

But about Africa, that they use their own proper law to rebaptize, it seemed good that, if some heretic comes to the Church, they should interrogate him on the creed (*symbolum*) and, if they see that he was baptized in the Father and the Son and the Holy Spirit, let only a hand be laid on him. But if, when interrogated as to the creed, he does not reply with this Trinity, let him justly be baptized.⁹⁵

Concerning anyone convicted of *traditio*, the council determined that anyone convicted of the offense by public records and not simply by words should be removed from office. So, Canon 14 states:

Concerning those who are said to have handed over sacred scriptures or church vessels or the names of their brethren, it seemed to us that whoever of them has been exposed from public records and not by mere say-so be removed from the *ordo* of the clergy. For if the same persons have been discovered to have ordained others and the account of those whom they ordained stands up, let their ordination not be a barrier to them. And since there are many who seem to fight against the

⁹⁴ See Constantine's letter to Chrestus, Eusebius, *H.E.*, 10.5.21—22.

⁹⁵ Canon 9, Arles (314): my translation, from the text of Charles Munier, in Jean Gaudemet, *Conciles Gaulois du IV^e siècle*, SCh 241 (Paris: du Cerf, 1977), 50. The form here translated is that appended to the Council's 'Letter to Silvester'; the form transmitted in the separate and longer collection of twenty-two canons shows minor differences (Gaudemet, *Conciles*, 50).

Church and who reckon that they ought to be permitted to make accusation through paid witnesses, they should not be allowed to do so at all, unless, as we said above, they have demonstrated the matter on the basis of public records.⁹⁶

This emphasis on the importance of public records would play a large role in the subsequent proceedings, and it was a point on which the Catholic party held a distinct advantage over the Donatists in that they seem to have had better access to the public records, especially those located in Carthage. It was also a point about which the Donatists would repeatedly complain, often asserting that the records being produced by Catholic advocates were not authentic.

The Council also instituted a penalty for those who had made false accusations. Canon 15 reads: ‘Concerning those who falsely accuse their brethren, it seemed good that they not receive communion even to death.’⁹⁷

The Donatist party did manage to secure a small victory of sorts at Arles in that they cast doubt on Felix of Aptunga, one of the men who had consecrated Caecilian. This resulted in an investigation in North Africa, no doubt due to the Council’s ruling that charges of *traditio* be proven not simply by words but through public records. From the *acta* of the hearing held before the proconsul Aelianus on 15 February 15 314 we learn that Felix’ accuser, Ingentius, a secretary from Felix’ city of Aptunga, was forced to admit (under threat of torture) that he had added certain language to a letter being used as evidence against Felix.⁹⁸ The outcome of the judicial proceedings makes it appear likely that Ingentius had made the allegation because Felix had accused a friend of Ingentius’, Maurus of Utica, of *traditio*. Felix was formally exonerated of the

⁹⁶ Canon 14, Arles (314): my translation, from the Twenty-two Canons (Gaudemet, *Conciles*, 52—4).

⁹⁷ Canon 15, Arles (314): my translation, from the Twenty-two Canons (Gaudemet, *Conciles*, 54). The ecclesiastical penalty for bringing a false accusation followed long-standing Roman legal penalties which were imposed against a person who brought a false claim. This is most evident in the Roman legal principle of *calumnia*, which will be discussed further in chapter four when Augustine’s legal strategies are examined at greater length.

⁹⁸ See ‘The acquittal proceedings of Felix Bishop of Abthugni’, in Optatus, *Against the Donatists*, tr. Edwards, 170—80.

charges against him, but, as we have seen, Donatus' supporters were never persuaded of Felix' innocence.

Constantine then summoned both Caecilian and Donatus to Rome, but for some reason Caecilian failed to appear. It would seem that the Donatist party was making substantial gains in North Africa and Caecilian thought it unwise to leave his position. A subsequent hearing was then held before Constantine in Milan in the fall of 316 about which little is known except that both Donatus and Caecilian were present. After hearing the evidence, Constantine again ruled against Donatus. However, his actions following this hearing make it possible that he contemplated a compromise of sorts in which a new bishop could be elected in Carthage. Perhaps Caecilian's lack of co-operation and Donatist gains on the ground gave Constantine concerns about Caecilian's status as the imperially recognized bishop in Carthage. To that end, Constantine sent two bishops, Eunomius and Olympius, to Carthage, seemingly with the intention of getting the election of a compromise candidate. But this effort failed when they recognized the intransigence of the parties.⁹⁹ Constantine next resorted to force. By imperial decree Donatist churches were confiscated, starting in 317.¹⁰⁰

In 'A Sermon on the Passion of the Saints Donatus and Advocatus Given on the Fourth Day before the Ides of March' we learn of a massacre that took place during this time when soldiers repossessed a Donatist church.¹⁰¹ However, the imperial efforts to repress the Donatists in North Africa seem to have only strengthened Donatist resolve against what they perceived as a new wave of persecution. It is also at this point that a rigid Donatist attitude towards 'Christian' emperors who persecute emerges. For the author of this sermon, preached during this same

⁹⁹ Optatus, 1.26.

¹⁰⁰ The decree itself is lost: see Frend, *Donatist Church*, 159, note 2, for sources in Augustine. Tilley, *Donatist Martyr Stories*, xv—xvi, noting that the actions of imperial soldiers are reflected in the passions describing the confiscation of churches.

¹⁰¹ *CPL* 719. Text: PL 8, 752—758; J.L. Maier, *Le dossier du donatisme*, 2 vols, Texte und Untersuchungen 134—5 (Berlin: Akademie Verlag, 1987—89), 1. Tr., 'A Sermon on the Passion of the Saints Donatus and Advocatus Given on the Fourth Day before the Ides of March', in Tilley, *Donatist Martyr Stories*, 52—60.

period, the imperial soldiers were persecutors, with allegiance to the antichrist and the devil.¹⁰² The events recorded in the sermon occurred under the *comes* Leontius¹⁰³ and *dux* Ursacius¹⁰⁴ and tribune Marcellinus,¹⁰⁵ and, according to the author, ‘the Devil appeared as counsellor for all of them. Their practices were rooted in the old Serpent...’¹⁰⁶ Referring to Constantine as the robber, the author discusses how Constantine used unity as a ploy for persecuting the Donatist party in favor of the party that began to be called ‘Catholic’. Although the author(s) of both accounts repeatedly refer to their opponents as agents of antichrist or the devil,¹⁰⁷ care must be taken before too much is read into these statements by Donatist martyrs. As will be seen in subsequent cases of Donatist involvement with imperial officials during the fourth and fifth centuries, the Donatists were prone to identify Rome with antichrist when Rome was persecuting and often after the Donatists themselves had appealed to Rome.¹⁰⁸ While the evidence is highly disputable, it seems likely that the charge of *traditio* was one that grew in strength as the controversy persisted, especially in light of the fact that so many of the Donatists’ own leaders faced evidence that they were guilty of what they alleged against others.

Having failed to resolve the schism in North Africa, in 316/317 Constantine’s attention turned to the East and Licinius and there is limited evidence for any further interactions with the

¹⁰² See Tilley, *Donatist Martyr Stories*, 51, dating this sermon that was attributed to Donatus to the period 317—321.

¹⁰³ *PLRE* 1, 499—500 (‘LEONTIVS 4’): ‘He was possibly *comes Africae* but could have been a *comes* sent from the *comitatus* as his personal representative by Constantine.’

¹⁰⁴ *Ibid.*, 1, 984 (‘VRSACIVS 1’).

¹⁰⁵ *Ibid.*, 1, 545 (‘Marcellinus 3’).

¹⁰⁶ ‘Sermon on Donatus and Advocatus’ 2 (Tilley, 53).

¹⁰⁷ See ‘Sermon on Donatus and Advocatus’ 1 (Tilley, 53): ‘so also it is necessary for the ministers of Antichrist to flee from that Name [Christ’s].’

¹⁰⁸ One of many references by persecuted Donatists to Rome as antichrist offering support for Tilley’s contention, referenced in the introduction, that the Donatist Church revived the notion of Rome as antichrist: Tilley, *Donatist Martyr Stories*, xiii.

Donatists on his part.¹⁰⁹ Given that Constantine would later cast himself in the role of protector and liberator of the Church against the ‘persecutor’ Licinius, it would not do to be persecuting North African Christians himself.¹¹⁰ Moreover, as the events of the fourth and fifth centuries would prove, North Africa was always one step away from slipping out from under the control of the Western emperor, making it likely that Constantine did not want to antagonize North African Christians as his attentions turned to the East.

Writing to Catholic bishops around the year 330, Constantine bemoans the stubbornness of the Donatists, but seems content to simply fund Catholic churches alongside those of the Donatists.¹¹¹ This resulted in the parallel growth of Donatist and Catholic churches in many parts of North Africa and what Tilley has properly termed a ‘*modus vivendi*’ being achieved between the two parties for several decades.¹¹² For their part, the Donatist Church seems to have grown quite strong during this time, and we read of 270 Donatist bishops assembled some time perhaps

¹⁰⁹ It was probably out of frustration at his lack of success in resolving the controversy that Constantine established what would come to be called the ‘bishop’s court’ *circa* 318. It was a move which was calculated to give the responsibility, and the blame, for resolving ecclesiastical matters to ecclesiastical judges. The extent to which the so-called ‘bishop’s court’, or *audientia episcopalis*, was a direct result of the Donatist controversy has not received sufficient scholarly attention to date and merits further examination. Questions about whether the bishop’s court functioned as a quasi-adjudicatory body, such as those dealt with in part by Caroline Humfress in her ‘Bishops and Law Courts in Late Antiquity: How (Not) to Make Sense of the Legal Evidence’, *J ECS* 19.3 (2011): 375—400, would be better answered with the Donatist controversy as their starting point. In particular, it is evident that the court was founded on the frustrations of an emperor in dealing with ecclesiastical matters. The place of the *audientia episcopalis* in Augustine’s response to the Donatists is addressed at more length in chapter four.

¹¹⁰ For Constantine’s strategy of casting himself as the liberator of persecuted Christians, see especially, Timothy D. Barnes, *Constantine and Eusebius* (Cambridge, MA: Harvard University Press, 1981).

¹¹¹ ‘Constantine to the Numidian bishops’, in Optatus, *Against the Donatists*, tr, Edwards, 198—201.

¹¹² Tilley, *Donatist Martyr Stories*, xvi.

in the 330s.¹¹³ The situation would no doubt have continued and Donatist dominance would have been assured in North Africa but for the actions of a group known as the ‘circumcellions’.

1.3 The Donatist Appeal to Count Taurinus in ca. 340

Approximately ten years after Constantine’s letter, certain Donatist bishops in Numidia appealed to Count Taurinus¹¹⁴ in ca. 340 to put down lawless members of the Donatist Church.¹¹⁵ It should be noted at the outset that this appeal was not a collective Donatist appeal on the part of the entire Donatist Church, but rather an appeal by certain frustrated Donatist bishops in southern Numidia. It is the first record of a group that would come to be called the ‘circumcellions’. The recent work of Brent Shaw on the circumcellions has put to rest many prior assumptions about them, including the view that they were a distinct group or the armed wing of the Donatist party.¹¹⁶

¹¹³ Augustine, *Ep.* 93.10.43, following Frend’s conjecture that the event Augustine references was ‘towards the end of Constantine’s reign’: Frend, *Donatist Church*, 167.

¹¹⁴ *PLRE* 1, 878—9 (‘TAVRINVS’).

¹¹⁵ Optatus, 3.4: ‘And when they [the circumcellions] showed spleen against the bishops of your party, the latter are said to have written to Taurinus, then the count, that men of this kind could not be corrected within the church, and required that they receive chastisement from the aforesaid count’ (tr. Edwards). Cf. Augustine, *c. Litt. Petil.* 3.29, which emphasizes that it was the Donatists who requested this aid from Taurinus.

¹¹⁶ For a summary of scholarly assessments of the ‘circumcellions’ before the work of Shaw and Gaddis, see Allan D. Fitzgerald, ‘Circumcellions’, in *Augustine through the Ages: An Encyclopedia*, ed. Allan D. Fitzgerald (Grand Rapids: Eerdmans, 1999), 193—4. Shaw (*Sacred Violence*) and Michael Gaddis (*There Is No Crime*) have challenged those assessments in significant ways that will be explored in what follows. See also, Noel Lenski, ‘Harnessing Violence: Armed Force as Manpower in the Late Roman Countryside,’ *Journal of Late Antiquity*, 6 (2013): 233—250.

The Circumcellions

The men described by Optatus would come to be known as ‘circumcellions’ to their enemies, chiefly Augustine, because they circled around the *cellae* for their food.¹¹⁷ The *cellae* may have been the tombs of the martyrs in Numidia.¹¹⁸ We learn from Augustine that these ‘circumcellions’ carried clubs (called ‘Israels’) instead of swords, had the refrain of ‘*Deo Laudes*’ and were often accompanied by women bound to vows of chastity.¹¹⁹ That they also seem to have courted death and a cult of suicide, especially in the later years of the controversy, cannot be ruled out.¹²⁰ As Brent Shaw has convincingly demonstrated, it is unlikely that the so-called circumcellions were a discrete group of people throughout the course of the Donatist controversy. Moreover, it is unlikely that they were the ‘shock troops’ of the Donatist party as so much of the scholarly literature has assumed.¹²¹ Augustine’s reports of the lawlessness of the circumcellions, especially their efforts to burn tax records and overthrow social order, were utilized by Frend to show the revolutionary nature of the Donatist party. However, this has been persuasively challenged by

¹¹⁷ Augustine credits their name to *circum cellas vagare* in *c. Gaudentium* 1.32.

¹¹⁸ See Frend, *Donatist Church*, 177.

¹¹⁹ Augustine’s description of circumcellion Donatists can be found in many of his writings, but the most famous one is found in *c. Gaudentium* 1.28.32. See also, Possidius, *Vita Augustini* 10.

¹²⁰ Augustine, *Ep.* 185.3.12: ‘Indeed, to kill themselves by means of steep cliffs, by means of water and fire, was their daily game’ (my tr.). Perhaps Augustine has in mind the death of the Donatist martyr Marculus, who was allegedly thrown from a cliff by imperial soldiers. See ‘The Martyrdom of Marculus’, in Tilley, *Donatist Martyr Stories*, 85. For a discussion of ‘voluntary martyrdom’, see especially Maureen A. Tilley, ‘African Asceticism: The Donatist Heritage’, in *Uniquely African Controversy*, ed. Dupont *et al.*, 127–40, for a compelling argument that some of these events may have been inspired by Donatist voluntary suicides/martyrdoms. The issue is also helpfully discussed at length by Gaddis, *There Is No Crime*, chapter three, ‘An Eye for an Eye’.

¹²¹ Shaw thinks the *agonistici* and the circumcellions may have been different groups entirely. Shaw, *Sacred Violence*, Appendix F. What is more likely is that their enemies called them ‘circumcellions’ and they called themselves *agonistici*. It would be yet another example of the same sort of dispute over names that is happening throughout the conflict with titles such as Firmiani, Macarii, Donatist, Caecilianist, Church of the Truth, and others being used by the various parties at various times.

Brent Shaw in his *Sacred Violence* and related articles on the circumcellions.¹²² Instead of seeing the circumcellions as the armed wing of the Donatist party, Shaw has shown¹²³ convincingly that the circumcellions were more likely various groups of day laborers of some sort who carried poles used in agricultural harvests in that region.¹²⁴ Importantly, *contra* much of the work of Frend, there is very little evidence that the circumcellions were motivated by a desire to overthrow an imperial power.¹²⁵

Shaw's broader work in *Sacred Violence* convincingly demonstrates the way in which persuasive leaders could utilize violence from their followers, and he makes the case that this occurred on the part of both Catholic and Donatist leaders. Therefore, while it seems improper to refer to the circumcellions as the armed wing of the Donatist party, it does seem appropriate to take seriously the reports of violence against the Donatists' opponents. While it would be reductive to assume that all the accounts of the circumcellions reflect a monolithic group bound together by all of the same goals, it is likely that there was some shared ideology which permitted their leaders to inspire them to action. Perhaps an analogy can be made to the

¹²² Shaw, *Sacred Violence*, Chapter 14 and Appendix F. See also, Brent D. Shaw, 'Bad Boys: Circumcellions and Fictive Violence', in H.A. Drake (ed.), *Violence in Late Antiquity: Perceptions and Practices* (Aldershot: Ashgate, 2006), 179—97.

¹²³ Following Shaw, it is probably best to think of the circumcellions as men who occasionally supported Donatist leaders, like Donatus Magnus in 347 and Optatus of Thamugadi in the late 390s, and who assisted Donatist bishops like Crispinus in the early 400s when the Church lacked imperial support, but who also got out of control and frightened even the bishops who used them, as in the case of the Taurinus repression in ca. 340.

¹²⁴ A point noted by Emin Tengström, in his excellent treatment of the circumcellions in *Donatisten und Katholiken: sozialen, wirtschaftliche und politische Aspekte einer nordafrikanischen Kirchenspaltung* (Göteborg: Elanders, 1964), 24—78.

¹²⁵ Cf. Shaw, *Sacred Violence*, chapter 14 and Appendix F, contrasting with the strained arguments of Frend for the circumcellions as social revolutionaries based on Augustine's descriptions of the circumcellions burning tax records and overthrowing the social order. Frend, *Donatist Church*, chapter 14. Shaw is correct in his argument that Augustine's accounts must be taken with a grain of salt as they were likely intended to motivate imperial officials to act against the Donatist movement as a threat to social order. Although Frend showed the connections between the circumcellions and the 'rebels' Firmus and Gildo, Shaw's work *inter alia* has shown that Firmus and Gildo are better understood as imperial usurpers, a point which seriously undermines Frend's assessments of the circumcellions as social revolutionaries.

supporters of other bishops in other parts of the empire, such as Athanasius in Alexandria or the followers of Alexander the Sleepless.¹²⁶ The records of the so-called ‘circumcellions’ being accompanied by women who had made vows of chastity and their self-reference as the *agonistici* means that we cannot rule out a group along the lines of the monks that were so commonplace and troublesome in the East during the fourth and fifth centuries. However, care should be made before they are labeled ‘monks’, given that their accompaniment by women who had made vows of chastity would not be consistent with what we know of monks in those other contexts.¹²⁷ In any event, this group, or groups, of men began causing trouble for the Donatist party around the year 340, and the Donatists appealed for assistance to Count Taurinus.¹²⁸

The Donatist Appeal to Taurinus

The only evidence for this Donatist appeal is found in Optatus’ *Against the Donatists* where he relates that two men named Fasir and Axido were causing trouble in Southern Numidia.¹²⁹ In particular, they seem to have led a raid on the homes of wealthy landowners and burnt tax records. According to Optatus, the Donatist leaders appealed to the imperial Count Taurinus, saying ‘that men of this kind could not be corrected within the Church’¹³⁰ and asking Taurinus to

¹²⁶ Barnes, *Athanasius and Constantius*; see also Daniel Caner, *Wandering, Begging Monks: Spiritual Authority and the Promotion of Monasticism in Late Antiquity*, Transformation of the Classical Heritage 33 (Berkeley: University of California Press, 2002).

¹²⁷ It should also be pointed out that the disparaging reference to the circumcellions in Tyconius long thought to be genuine has been shown by Shaw on philological grounds to be much later and probably the work of Beatus. See Shaw, ‘Bad Boys’, 25.

¹²⁸ Optatus, 3.4. The date for this is largely dependent on the location of this account in Optatus’ third book, before the account of the Macarian persecution. J. Alexander’s argument for dating the Taurinus repression to after 347, and after the Macarian repression, is unpersuasive: J. Alexander, ‘Count Taurinus and the Persecutors of Donatism’, *ZAC/JAC* 2.2 (1998): 247—67.

¹²⁹ Optatus, 3.4.

¹³⁰ Optatus, 3.4 (tr. Edwards, 69); in *Ecclesia corrigi non posse* (Ziwsa).

punish them.¹³¹ The record of this Donatist appeal to Taurinus is no longer extant, and Optatus did not have a copy of it, reporting instead that he had heard of the letter from the Donatist leaders to Taurinus.

Taurinus responded to the Donatist request by sending soldiers to go to the markets where these men were accustomed to gathering. Taurinus' soldiers massacred a 'large number', including a number who were beheaded at a market in Octava in Numidia. The people killed by Taurinus became martyrs to certain Donatists who defied the orders of their leaders and had the names of these people inscribed on tables (*mensae*) in their churches in Numidia. Optatus writes that 'their bodies could be numbered up to this day among the defaced altars and tables'. He continues, 'When the burial of some of this number had commenced, Clarus the presbyter in the locus Subbulensis was compelled by his bishop to undo the burial. This revealed that what had happened had been ordered to happen, since it was forbidden even to give them burial in the house of God.'¹³² Interestingly, one can glimpse here a disconnect between the views of the Donatist leaders who appealed to Taurinus to punish these people and then forbade them being treated as martyrs, and certain Donatists such as the priest Clarus, who defied the leadership to keep alive the memory of these putative martyrs. As we shall see, it was not the only time that the Donatists would experience a division within the ranks and would utilize imperial authorities to compel unity.¹³³

Following the suppression of the 'circumcellions' by Count Taurinus in ca. 340, things seem to have returned to normal in North Africa for the Donatist party. Interestingly, there is no

¹³¹ *ut a supra dicto comite acciperent disciplinam* (Ziwsa). The correlation between the Donatists' request to an imperial official for punishment of their own incorrigible members and Augustine's later requests for correction of the Donatists is a fascinating and often overlooked aspect of the controversy. Here we see one early precedent for appealing to an imperial official for punishment of incorrigible members of the Church.

¹³² Optatus, 3.4 (tr. Edwards).

¹³³ This is one fascinating complement to Hermanowicz's *Possidius of Calama*, which shows how the Donatists implemented this strategy in the 390s against their schismatic Maximianists. Here we have the precedent for that strategy of appealing to imperial officials against their own troublesome members in the conduct of the Donatist leaders in ca. 340 against the circumcellions.

evidence that the Catholic party gained anything by virtue of this suppression of certain Donatists, and it seems likely that the Donatist leadership felt dominant enough in the region where the suppression occurred not to fear Catholic gains as a result of this appeal to imperial power. It was a feeling of supremacy which would result in a major miscalculation by the otherwise politically savvy and resourceful Donatus Magnus in 346.

1.4 The Donatist Appeal to Constans in 346

Everything changed for the Donatists in 346 when Donatus of Carthage appealed to Constans. The text of the appeal is no longer extant, but the event is recorded in Optatus¹³⁴ and there is no evidence that the fact that the appeal was made was ever contested by the Donatists. On the surface, the Donatist appeal was a relatively straightforward matter. Donatus Magnus asked Constans to recognize him as senior primate of Carthage following the death of Caecilian and the accession of Gratus as Catholic bishop in Carthage. While the text of the appeal is lost, from what we know about ecclesiastical practice of the time, it should have met with a quick and easy determination from the Emperor Constans. That it did not is worthy of more consideration than has been given to it thus far in Donatist scholarship.

¹³⁴ Optatus, 3.3. ‘In this work I shall show that our agents did not do anything at our desire or through their own malice, but at the provocation and instance of causes and persons, set up irresponsibly by Donatus of Carthage, as he was striving to appear a great man. For whom has he deceived but you because you are an immigrant and false stories could be told to you? Or who can deny a matter to which the whole of Carthage is the principal witness, namely that the Emperor Constans did not initially send Paulus and Macarius to bring about unity, but with alms to relieve the poor, so that they might breathe, be clothed, eat and rejoice throughout the several churches? When they came to Donatus, your father, and told him why they had come, he, inflamed by his wonted folly, broke out into these words: “What has the church to do with the emperor?”’ (tr. Edwards, 62). It should be noted that this limited extant evidence was interpreted by Tilley (xvi), *et alios* to reflect an appeal by Donatus to Constans and this thesis follows her interpretation of the phrase about Donatus ‘striving to appear a great man’ as evidence for an appeal for imperial recognition as the senior primate of Carthage. The evidence is admittedly limited on this point.

The North African Ecclesiastical Precedent of Seniority

The appeal concerned a North African precedent that had developed following the Council of Arles in 314. In the event that a North African city had two bishops, one Donatist and one Catholic, the senior bishop would be recognized as the senior primate.¹³⁵ In the case of the city of Carthage, being recognized as the senior bishop of Carthage would have involved a significant amount of prestige in North Africa and perhaps financial assistance. While the letter of Constantine from 330 makes it likely that the imperial policy from 321 to 346 was to financially support Catholic churches and allow Donatist churches to coexist alongside them, it seems that Donatus's appeal to Constans was an attempt to change that imperial posture in Donatism's favor.¹³⁶ Indeed, after decades of coexistence with the Catholic party in North Africa, Donatus appears to have seen the chance to elevate the Donatist Church to dominance in North Africa by gaining formal recognition from the emperor. Perhaps the Donatist party's success in appealing to Count Taurinus regarding the circumcellions' violence encouraged the Donatists to seek recognition as the imperial Church of North Africa.¹³⁷ But Donatus severely miscalculated the broader geopolitical situation. From what we know of Donatus, it would seem that he had a reputation as a shrewd but virtuous man.¹³⁸ And yet, as will be shown, in the appeal to Constans Donatus misread the political climate so that his appeal to Constans resulted in the severe repression of the Donatist Church in North Africa.

¹³⁵ Tilley, *Donatist Martyr Stories*, xvi.

¹³⁶ The most probable reading of Optatus' description of Donatus' action as 'striving to appear a great man': Optatus, 3.3 (tr. Edwards, 62).

¹³⁷ The strength of the Donatist party on the ground is evident from the number of bishops assembled at a Donatist conference in the 330s.

¹³⁸ Augustine offers begrudging praise of him and even relates that he was known by his people to perform miracles: *In Jn. tract.* 13.17. Also, Jerome writes that Donatus wrote a treatise on the Holy Spirit which was Arian in doctrine (*De vir. ill.* 93) and Augustine claims knowledge of this treatise as well. If Donatus did have any interest in forming alliances with 'Arian' parties, a treatise of this sort may have been helpful although the likelihood of Easterners reading treatises in Latin is very low. This will be discussed at much more length in chapter 3.

The Council of Serdica

The events of Donatus' appeal to Constans in 346 are shrouded in mystery. As mentioned above, the precise text of the appeal is no longer extant, and what we know of it comes from the discussion of it in Optatus. We do not know precisely when Caecilian died, but his successor Gratus (or a representative of Gratus) is mentioned at Serdica, which was held in 343. On this view, Caecilian must have died before 343.¹³⁹ It is the Council of Serdica that offers a clue to what happened in the aftermath of Donatus' appeal of 346. The Council of Serdica was called by the Western Roman Emperor, Constans, in an ostensible effort to resolve, *inter alia*, certain Trinitarian issues pertaining to the so-called 'Arian controversy'.¹⁴⁰ The outcome of the Council was a near total disaster, if unity was ever really its goal.¹⁴¹ The pro-Athanasian faction, primarily represented by bishops from the West, and the heterodox ('Arian') party,¹⁴² predominantly bishops from the East, were unable to come to any meaningful agreement. This

¹³⁹ It is unclear whether Gratus was personally present at Serdica in 343. Sara Parvis, *Marcellus of Ancyra and the Lost Years of the Arian Controversy, 325–345* (Oxford: Oxford University Press, 2006), 224.

¹⁴⁰ Hamilton Hess, *The Canons of the Council of Sardica, AD 343: A Landmark in the Early Development of Canon Law* (Oxford: Clarendon Press, 1958), 7. According to Hess, the council was called at the insistence of a number of pro-Athanasian bishops in the West who feared that 'the Church was in serious danger of permanent schism.' Hess observes that the bishops had three goals in calling this conference: 'the preservation of Nicene doctrine, the attainment of justice for the victims of Eusebian oppression, and the re-establishment of jurisdictional order' (7). A heavily revised version was published as Hamilton Hess, *The Early Development of Canon Law and the Council of Serdica* (Oxford: Clarendon Press, 2002).

¹⁴¹ T.D. Barnes in his insightful treatment of Serdica in *Athanasius and Constantius* demonstrates the extent of the bitter, political posturing at work on all sides at this conference.

¹⁴² As with terms like 'Donatist' and 'Catholic', the term 'Arian' is fraught with peril. The details of the so-called 'Arian controversy' are far too many to be adequately addressed in a thesis with its focus on legal issues in the Donatists' appeals. Thus, the term 'Arian' will be used to describe parties who were not pro-Nicene or pro-Athanasian, while giving full recognition to the voluminous scholarship which contests earlier assumptions of the controversies of the fourth and fifth centuries as between 'Arians' and 'Nicenes.' For recent work on Arianism which helpfully addresses this subject at more length than can be given in this thesis, see the papers in Guido M. Berndt and Roland Steinacher (eds), *Arianism: Roman Heresy and Barbarian Creed* (Farnham: Ashgate, 2014).

resulted in effectively two separate Councils (one Western and ‘Catholic’; the other Eastern and ‘heterodox’).¹⁴³ Needless to say, both sides went their separate ways with anathemas all round.¹⁴⁴ The canons which were promulgated by the pro-Athanasian party at Serdica, a number of which recapitulate critical aspects of Nicene dogma, seem to have quickly passed out of currency in the West for quite some time.¹⁴⁵

Of significance for the Donatist party, immediately following the failed Council, the heterodox (‘Arian’) Eastern bishops sent a letter to a number of dissident bishops in the West. The letter appears to encourage the dissidents to keep up the fight with the Western party. Included among those bishops is Donatus of Carthage.¹⁴⁶ The letter, a copy of which is contained in Hilary’s *Ecclesiastical History*, condemns Marcellus of Ancyra, Athanasius of Alexandria, and others including Julius of Rome.¹⁴⁷ *Inter alia*, the letter describes Marcellus of Ancyra as ‘a pest

¹⁴³ Barnes, *Athanasius and Constantius*, 80.

¹⁴⁴ For a more detailed discussion of the issues at stake in the Council and its immediate aftermath, see Parvis, *Marcellus*, 200—52.

¹⁴⁵ In particular, they seem to have had almost no influence in North Africa for approximately eight decades: the last time we know they were cited during the fourth century was later that same decade when Gratus, the Catholic bishop of Carthage, made reference to them at a council held in Carthage a few years later. Barnes observes that ‘the canons appear to have been otherwise unknown in the West, except at Rome, until their sudden rediscovery and employment toward 420’ (*Athanasius and Constantius*, 79). In an influential and informative article on this subject, W. Telfer explores the fact that the canons seem to have been first rediscovered in roughly the year 419 as part of a controversy between North African bishops and the Pope over ecclesiastical jurisdiction in North Africa – a dispute in which Augustine was also heavily involved: W. Telfer, ‘The Codex Verona LX(58)’, *HTR* 36 (1943): 169—246.

¹⁴⁶ See Barnes, *Athanasius and Constantius*, 72, noting that included among the addressees of the letter were not only Donatus but also the schismatic bishop of Salona in Dalmatia (name unknown); three Campanian bishops, Fortunatus in Naples, Desiderius, and Eutychius; and the clergy of the church of Ariminum). See also Parvis, *Marcellus*, 223—4, observing that the author of this letter was likely the bishop Acacius and that Donatus did not attend Serdica while it is unclear whether his Catholic counterpart, Gratus, was present in support of the pro-Athanasian party.

¹⁴⁷ Others included Paul of Constantinople, Asclepas of Gaza, Lucius of Adrianople, Ossius, Protogenes of Serdica, Maximinus of Trier, Gaudentius of Naissus. Barnes, *Athanasius and Constantius*, 73.

more damnable than all heretics'. Likewise, Athanasius is condemned and a litany of charges are brought against him and against other bishops who have supported him. This letter is intriguing because it appears to offer an instance of a heterodox ('Arian') faction attempting to make common cause with the Donatists against their common pro-Athanasian ('Catholic') enemy. Such a coalition of disparate parties certainly was not a new development in fourth century Trinitarian controversies. The motley collection of bishops arrayed in opposition to Athanasius is just one example.¹⁴⁸ But the implications arising from the possibility of an attempted alliance between Donatists and 'Arians' are critical for discerning Constans' response to this appeal.¹⁴⁹

We have no evidence that Donatus responded to the letter from the Eastern bishops. However, as will be discussed at more length in chapter three, there is evidence that Donatus wrote a treatise on the Holy Spirit around this same time which was reported to be 'Arian in doctrine' and possibly 'Arian' in its Christology.¹⁵⁰ As will be discussed at more length in chapter three, such a treatise could have been a way for Donatus to reach out to Eastern parties in forming an alliance against the North African Catholic party. That said, such a diplomatic overture would be unlikely given that Easterners generally did not read Latin texts. Moreover, any treatise on the Holy Spirit from the 340s would have appeared 'Arian' in doctrine from the perspective of the 390s.

Constans clearly perceived a threat to his rule in the West. There were tensions throughout the mid-340s between East and West, and war was not outside the realm of possibility in 346. Indeed, Constans and Constantius were on the brink of war in early 345 over another bishop, Athanasius.¹⁵¹ Moreover, North Africa was supplying Rome with grain and Constans could ill afford to lose its support to the East and his brother Constantius. We also

¹⁴⁸ Barnes discusses the diverse faction assembled in opposition to Athanasius, a coalition that included a broad array of shifting loyalties. For an example of this, see his discussion of the diverse group of Eastern bishops at Serdica: *Athanasius and Constantius*, 72—3.

¹⁴⁹ The implications arising from this attempted alliance for understanding the aftermath of Donatism post-429/430 will be explored at more length in chapter three.

¹⁵⁰ Jerome, *De vir. ill.* 93; Augustine, *Ep.* 185.1.

¹⁵¹ Parvis, *Marcellus*, 200.

know that the African bishops were actively lobbying Constans' court because the aged Ossius of Cordoba laments the presence of so many African bishops at the imperial court,¹⁵² and it is quite possible that sources favorable to Gratus prejudiced the emperor against Donatus' party. Ossius had presided at Serdica, and it is likely that either Gratus or at least North African bishops loyal to him would have had opportunity to make common cause with bishops who had the ear of Constans. If the Catholic party was looking for such a thing, the recent repression of Donatist circumcellions in ca. 340 by Taurinus offered evidence of the possibility of renewed violence within the Donatist ranks.

The 'Macarian Persecution'

Constans responded to Donatus' appeal by sending two imperial officials – probably *notarii*¹⁵³ – named Paul¹⁵⁴ and Macarius¹⁵⁵ to North Africa in early 347 with soldiers and funds to distribute to the people of North Africa.¹⁵⁶ Optatus records these events as evidence of the imperial benevolence,¹⁵⁷ but it was anything but that, and Donatus quickly and shrewdly perceived that the actions of the imperial *notarii* were calculated to win over his Donatist followers with bribes.¹⁵⁸ It would appear that the imperial *notarii* had come to North Africa intent on suppressing the Donatist Church. Seeing imperial soldiers doling out money to his supporters,

¹⁵² Serdica, Canon 7 (Greek canons): text and tr. in Hess, *Early Development*, 230—1.

¹⁵³ See Brent Shaw's 'Augustine and Men of Imperial Power' and his excellent discussion of the term 'notary' as it is used here.

¹⁵⁴ *PLRE* 1, 683 ('Paulus 2'), possibly identical with Paul the Chain ('Paulus 'Catena' 4').

¹⁵⁵ *PLRE* 1, 524—5 ('Macarius 1').

¹⁵⁶ Most of what we know of the 'Macarian persecution' comes from the third book of Optatus, *Against the Donatists*, and the martyr *acta* written by Donatists, especially the *Passion of Isaac and Maximian* and *Martyrdom of Marculus*.

¹⁵⁷ Optatus, 3.3.

¹⁵⁸ Frend, *Donatist Church*, 178. Frend is probably correct that Donatus wrote a letter to Constans protesting the actions of Paul and Macarius, but that his efforts were to no avail. This makes it even more likely that the mission to North Africa had the goal of repressing the Donatists from the outset.

Donatus stood against the officials and refused to compromise. The famous words attributed to Donatus, ‘What has the emperor to do with the church?’, come from this episode.¹⁵⁹ One of Donatus’ supporters, a bishop from Bagai also named Donatus, seems to have rallied considerable support from among the circumcellions and actively opposed the imperial soldiers.¹⁶⁰ Several imperial soldiers were killed by Donatists, and a severe repression ensued.

The Donatist *Martyrdom of Marculus* offers a vivid account of the repression.¹⁶¹ In the events related in the *Martyrdom of Marculus*, imperial soldiers imprisoned and then publicly beaten Donatist leaders.¹⁶² They also imprisoned a Donatist bishop (Marculus) and then chased him to the top of a cliff at Nova Petra in the early morning hours and threw him from the top.¹⁶³ This was in all likelihood a judicial murder in which the soldiers sought to hide their actions from a populace supporting the bishop Marculus.¹⁶⁴ The Donatists would later call their Catholic opponents ‘Macarians’ in memory of this period of persecution.¹⁶⁵

As with the prior Donatist martyrdom accounts, the *Martyrdom of Marculus* pictures Roman officials as agents of antichrist. So, for example, the author of the *Martyrdom of Marculus* states at the beginning of the account: ‘It is right and proper enough that the bravery of the more recent martyrs should be joined to the praise of the witnesses of old. The rage of the

¹⁵⁹ Optatus, 3.3.

¹⁶⁰ The soldiers are referred to by Optatus 3.1 as ‘*armigeri*’ who came ‘*cum pharetris*’ (p. 68, line 6, Ziwsa): Frend points out that the presence of ‘bowmen’ indicates that these were regular imperial soldiers (*Donatist Church*, 179).

¹⁶¹ CPL 720. Tr. Tilley, *Donatist Martyr Stories*, 78—87. Text, PL 8, 760—6; Maier, *Dossier*, 1, 275—91.

¹⁶² Tilley, *Donatist Martyr Stories*, 80.

¹⁶³ *Ibid.*, 84—5.

¹⁶⁴ See Gaddis’s sound analysis of why this was a judicial murder carried out in the early morning hours to avoid riots: Gaddis, *There is No Crime*, 109—10. See also Tilley’s analysis in *Donatist Martyr Acts*, 77. It seems likely, following Gaddis’s analysis, that Marculus was either thrown from the cliff or jumped to avoid being captured by the soldiers.

¹⁶⁵ For example, Augustine references the fact that the Donatists were calling their Catholic opponents ‘Macarians’: *Ep.* 23.1.

Gentiles who were obeying the devil chose the martyrs for the heavenly kingdom; and so the savagery of the traitors *who were serving the Antichrist* sent them to heaven.’¹⁶⁶ However, these statements about Rome as antichrist do not demonstrate that the Donatist Church saw Rome as antichrist *per se*. Rather, they evince Donatist frustration at their failure to get the mechanisms of imperial power to work in their favor. And having failed in that attempt, the Donatist author of this account places the imperial officials in the category of persecuting agents of antichrist.¹⁶⁷

Following a short period of intense repression, the imperial authorities recognized Gratus as sole bishop of Carthage in August of 347 and in 348 Gratus was able to claim that unity had been re-established.¹⁶⁸ Imperial officials banished Donatus along with a number of other Donatist leaders. Donatus would die in exile, perhaps around the year 355.¹⁶⁹

1.5 The Donatist Appeal to Julian in 362

For more than a decade, the Catholic Church in North Africa had imperial recognition and support. Very little is known about this period in North African ecclesiastical politics.¹⁷⁰

¹⁶⁶ *Martyrdom of Marculus* 1 (tr. Tilley; emphasis added).

¹⁶⁷ The Donatist *Passion of Isaac and Maximian* (CPL 721: tr., Tilley, *Donatist Martyr Stories*, 63—75; text, PL 8, 767—74; Maier, *Dossier*, 1, 256--75) offers a similarly vivid portrait of the Macarian repression. In this passion, the Donatist Maximian volunteers for persecution by tearing down the imperial edict, perhaps mimicking the conduct of the Christian four decades earlier who tore down Diocletian’s edict. As with other Donatist martyr accounts, the author of this *Passion* (ostensibly the bishop Macrobius in Rome around 348 (Tilley, *Donatist Martyr Stories*, 61) repeatedly refers to the persecutors as ‘beastly’ and as agents of the devil. See also, Vitellius Afer, a Donatist author about whom little is known, who wrote a work, *De eo quod odio sint mundo Dei* (see Frend, *Donatist Church*, 185) during this same period. The work is no longer extant, but its title depicts the same attitude. Of course, this is consistent with the argument of this thesis that the Donatist posture towards Rome was antagonistic at such times as Rome was persecuting the Donatist Church.

¹⁶⁸ See Frend, *Donatist Church*, 182—3. For the canons, C. Munier (ed.), *Concilia Africae a. 345 – a. 525*, CCL 149 (Turnhout: Brepols, 1974), 2—10.

¹⁶⁹ Following Frend on the likely date of Donatus’ death: *Donatist Church*, 185.

¹⁷⁰ For an excellent discussion of this period, see *ibid.*, 181—7.

However, in 361, the emperor Julian became sole emperor of the Roman Empire, and in 362 the Donatists lodged an appeal with him for the return of property confiscated during the Macarian persecution. The Emperor Julian's strategy *vis-à-vis* Christian factions is humorously recounted in the historian Ammianus.¹⁷¹ Whether this simply reflects Ammianus' own view of Christianity or that of Julian, it is evident that Julian was not unhappy to see Christians divided amongst themselves. Moreover, as many emperors had done before him, upon becoming emperor Julian pursued a policy of permitting banished bishops to return to their sees. He permitted Athanasius to return to Alexandria, and he also allowed Donatists to return to North Africa.¹⁷²

The Election of Parmenian in 362

While in exile the Donatist party seems to have been led by the bishops Pontius and Macrobius.¹⁷³ As mentioned above, Macrobius probably preached the sermon from which we derive the *Passion of Isaac and Maximian*. Little is known about Pontius, but he would be one of the signatories on the appeal to Julian in 362 and seems to have organized the return of the Donatist exiles to North Africa.¹⁷⁴ But the leadership of the Donatist party would soon pass to Parmenian.¹⁷⁵ In 362, Parmenian became the Donatist bishop of Carthage and the successor to

¹⁷¹ Julian had no fear of Christians uniting, 'knowing as he did from experience that no wild beasts are such enemies to mankind as are most of the Christians in their deadly hatred of one another.' Ammianus, *Res Gestae* 21.5.4 (tr. J.C. Rolfe, LCL 315).

¹⁷² See Optatus' description of the Donatist appeal to Julian: 'You brought a petition to him, that you might be able to return; these prayers, if you deny making them, we can read. Nor did the one whom you asked offer a difficulty; to fulfil his own design, he bade them go, as he knew that they were going to disturb the peace with their madness. Blush, if you have any shame; freedom was restored to you by the same voice that commanded the idols' temples to be reopened' (Optatus, 2.16 (tr. Edwards)).

¹⁷³ Frend, *Donatist Church*, 185.

¹⁷⁴ Following Frend's assessment, *ibid.*, 185—7. Sources in *PCBE* 1, *Afrique*, 885—6 ('PONTIVS 1').

¹⁷⁵ *PCBE* 1, *Afrique*, 816—21 ('PARMENIANVS').

Donatus of Carthage, who had died in exile. Parmenian was not himself an African,¹⁷⁶ but he pursued a vigorous policy of restoring Donatist dominance in North Africa in the 360s.

The early period of Parmenian's primacy in Carthage seems to be a time of active co-operation with imperial officials.¹⁷⁷ Nowhere is this more evident than in the Donatist response to the 'revolt' of Firmus in ca. 373/5, which will be discussed below. At the same time, the period of the 360s marked the beginnings of significant fissures which would eventually lead to the Donatist Church's defeat at the hands of Augustine. In particular, the Rogatist schism was a harbinger for the later Maximianist schism, which Augustine was to use to such good effect. Moreover, it was the arguments of Rogatus, especially the distinctions between proper judicial coercion and lawless violence which Augustine was able to incorporate and use against the Donatists.

The Text of the Donatist Appeal to Julian

The extant and fragmentary portion of the text of the Donatist appeal to Julian reads: ... *apud eum sola iustitia locum haberet* ...¹⁷⁸

Julian responded by granting the Donatists' appeal, consistent with his broader policy of fostering divisions within the ranks of the Christian Church.¹⁷⁹ The obsequious nature with which the Donatist leadership addressed Julian would come to haunt the Donatist party.

¹⁷⁶ *Ibid.*, 187—8.

¹⁷⁷ Although not an African himself, Parmenian seemed to have been a leader on the order of Donatus Magnus and skillfully led the Donatist Church for almost thirty years. For an excellent recent treatment of Parmenian, see Gaumer, 'Election of Primian'. Interestingly, Gaumer identifies the death of Parmenian in 391 and the election of Primian as the harbinger of the Donatists' decline and eventual defeat at the hands of their Catholic opponents, Augustine chief among them.

¹⁷⁸ Augustine, *c. Litt. Petil.*, 2.97.224. Augustine would often repeat to Donatists that they had once told Julian that 'justice alone' governed his judgements.

¹⁷⁹ *Ibid.* Augustine also records part of Julian's reply: *Hoc quoque supplicantibus Rogatiano, Pontio, Cassiano et ceteris episcopis, sed et clericis, accedit ad cumulum, ut abolitis quae adversus eos sine rescripto perperam gesta sunt, in antiquum statum cuncta revocentur* and summarizes the reply in *Ep.* 105.2.9.

Augustine referred to this appeal repeatedly, and we know that Honorius had Julian's rescript posted throughout North Africa in 405 in order to shame the Donatists. Of course, exiles in these instances probably were required to ask formal permission, and the use of formulaic politeness to do so is not necessarily indicative of an alliance with the imperial authorities. Restored Nicenes would be expected to use the same formulaic politeness. However, the focus of this section is on Augustine's use of this appeal as a precedent in his own arguments against the Donatists.

The Enforcement of Julian's Rescript and the Rogatist Schism

Following the rescript of Julian, significant amounts of violence broke out throughout North Africa as exiled Donatist bishops returned and recovered property that had been confiscated during the Macarian persecution. Optatus describes a number of cases that involved the violent expulsion of Catholic bishops, the forcible rebaptism of Catholics, the violation of women devoted to chastity, and the rigorous cleaning and purification of Catholic churches.¹⁸⁰ Two Donatist bishops led an attack on the Catholic church in Lemellefense which resulted in the death of two Catholic deacons.¹⁸¹ Optatus also relates another case in which the imperial official in Mauritania Caesariensis, Athenius, supported the Donatist efforts to take back a church.¹⁸² Interestingly, Optatus' description of the Donatist return to power includes the statement that 'the devil was released from his imprisonment',¹⁸³ which is an important parallel to the Donatists'

¹⁸⁰ 'It was almost at the same instant that your madness returned to Africa and the devil was released from his imprisonment. And you do not blush that you and the enemy have common joys at the same time! You came as madmen, you came in anger, mutilating the limbs of the church, subtle in deceit, ruthless in slaughter, goading the sons of peace into war. You drove many into exile from their sees, when, with hired bands, you broke into the churches; many of your number, in many places which it would take too long to tell by name, committed bloody murders so atrocious that an account of these deeds was submitted by the judges of that era' (Optatus, 2.17 (tr. Edwards)).

¹⁸¹ Optatus, 2.18; Frend, *Donatist Church*, 189.

¹⁸² Optatus, 2.18; Frend, *Donatist Church*, 189—90. Nothing is known of Athenius (*PLRE* 1, 121 ('*ATHENIVS*')) other than this reference in Optatus.

¹⁸³ Optatus, 2.17.

descriptions of the Catholic/imperial persecutions. When imperial powers persecuted they were agents of the devil for both Catholic and Donatist.

Julian's policy and Donatist implementation of it with the support of imperial officials firmly re-established the Donatist party as the majority party of North Africa. However, the vigorous implementation of Julian's policy also led to fragmentation within the Donatist Church. In particular, around the year 364¹⁸⁴ the Donatist church experienced its first major schism, a division which would come to be known as the Rogatist schism. Almost everything that is known about the Rogatists comes from Augustine's letter to his old friend from his school days in Carthage, a Rogatist bishop in the city of Cartenna named Vincentius.¹⁸⁵ From certain statements of Augustine's in that letter, it is clear that the Rogatists objected to the violence of the broader Donatist party. This is a point which will be explored at greater length in chapter four.

1.6 The Donatist Appeal to Firmus in ca. 373/5

Following the death of Julian on his campaign against Persia in 363 the Donatists lost the support of the emperor, and the remainder of the 360s were marked by attempts at imperial repression in the person of Count Romanus,¹⁸⁶ who seems to have inspired a great deal of resentment by carrying out taxation policies that hit the Numidian region especially hard.

During much of the fourth century, North Africa supplied Rome with grain, just as Egypt supplied the Eastern Empire with the same. North Africa was lightly policed by Roman soldiers because it was generally seen as a stable region with little reason for concern.¹⁸⁷ The one area which worried Western emperors during the fourth century concerned the possibility that North Africa would come under the command of the Eastern emperors. As has been shown, this is

¹⁸⁴ The dating will be discussed at greater length in chapter four.

¹⁸⁵ Augustine, *Ep.* 93.

¹⁸⁶ Frend, *Donatist Church*, 197. For what is known of Romanus' career, see *PLRE* I, 768 ('ROMANVS 3').

¹⁸⁷ See generally, Shaw, *Environment and Society*.

probably what inspired Constans' policy of repression following the appeal of Donatus in 346.¹⁸⁸ This became a concern to the Western emperor, Valentinian, a little before the year 375 when an imperial official in North Africa attempted to usurp his power. In particular, a little before 375, a Mauritanian imperial official named Firmus began feuding with his brother, Zammac, over who would be successor to their father, Nubel.¹⁸⁹ Firmus eventually killed Zammac and attempted to usurp authority in North Africa from the *comes* Romanus. However, Romanus had the ear of officials in Valentinian's court even though Firmus was recognized by certain imperial troops as 'Augustus.'¹⁹⁰ It is likely that Firmus made this strategic move because he had been engaged in conflict with Romanus, who managed to gain the ear of the emperor Valentinian and turned Valentinian against Firmus.¹⁹¹ Fearing the worst, Firmus became yet another of the imperial usurpers who peopled the fourth century. While, as we have seen, Frend's assessment of a North African context ripe for rebellion has been seriously challenged by Shaw, Frend did effectively show the heaviness of taxation during the period leading up to the 'Firmus revolt'.¹⁹² Many North Africans, including many Donatists, especially in Numidia, rallied to his side.

At the outset, it should be noted that this so-called 'Firmus revolt' was not really a revolt at all. Rather, it was a dispute over dynastic succession within a royal family in North Africa.

¹⁸⁸ We know of at least one occasion in the fourth century when this was specifically attempted. In the 390s, Gildo led a revolt against Honorius, and Honorius' 'regent', the general Stilicho, Gildo attempted to form an alliance with the East in which North Africa would become part of the domain of Honorius' brother, Arcadius. This will be discussed at more length in chapter two.

¹⁸⁹ *PLRE* 1, 340 ('Firmus 3'), with 1, 801 ('Sammac') and 1, 633—5 ('Nubel').

¹⁹⁰ Frend, *Donatist Church*, 198, although Frend improperly understands this action to be Firmus making himself a 'king' in North Africa. Cf. Shaw, *Sacred Violence*, Chapter 14, 15, Appendix F, which challenges Frend's assessment and shows, rather, that Firmus was an imperial usurper. See also Alan E. Wardman, 'Usurpers and Internal Conflicts in the 4th Century A.D.' *Historia* 33.2 (1984): 220—37, discussing the tendency to refer to an unsuccessful usurper in terms that depict him as a brigand (*latro*). Claudian's description of Gildo and Ammianus' treatment of Firmus have distracted scholars from their respective roles as imperial usurpers rather than rebels. For another example of a North African 'rebel' who was more of a usurper, see the 413 usurpation led by Heraclius which resulted in the execution of Augustine's friend Marcellinus.

¹⁹¹ Frend, *Donatist Church*, 197—198.

¹⁹² Frend, *Donatist Church*, 197—8.

Brent Shaw's treatment of Firmus in *Sacred Violence* has firmly relocated Firmus from the position of rebel chieftain (as, for instance, in Frend's treatment) and into the category of a rival to the Emperor Valentinian. Firmus' decision to take the title of 'Augustus' clearly points in that direction. This is significant in that it undercuts Frend's argument for the Donatists as a proto-revolutionary sort of movement. Firmus was both a local chieftain and an imperial official. As such, it would seem that during the process of feuding in the first category he made a claim to be 'Augustus' in the second. During the period that Firmus held power in portions of North Africa, probably a little before 375, we have evidence from Augustine that the Donatist party used troops loyal to Firmus to repress the Rogatists in Cartenna and the surrounding regions.¹⁹³ In particular, Augustine taunts Vincentius with the fact that the Donatist leadership had used imperial soldiers to repress the Rogatists.¹⁹⁴ Augustine references the fact that the Catholics call the Donatists 'Firmians', just as the Donatists call the Catholics 'Macarians'.¹⁹⁵ In about 375, Theodosius, the general and father of the future emperor, was able to successfully bring the 'revolt' to a conclusion, culminating in the betrayal of Firmus by his brother Gildo, and Firmus' suicide.¹⁹⁶ This story would be retold almost verbatim two decades later when Gildo himself became an imperial usurper, and with the same unsuccessful outcome.

The situation during the 370s was mixed for the Donatists. An imperial law of 373 appears to be specifically targeted against Donatist bishops who rebaptize.¹⁹⁷ But, just a few

¹⁹³ Frend, *Donatist Church*, 197—9. It is likely, based on the very limited evidence available, that this was not a collective Donatist action but rather individual initiatives by Donatist bishops in the region who saw an opportunity to use these soldiers who were loyal to Firmus for their own ends.

¹⁹⁴ Augustine, *Ep.* 93.4.12.

¹⁹⁵ Augustine, *Ep.* 87.10 (to Emeritus).

¹⁹⁶ Frend, *Donatist Church*, 197—9: sources in *PLRE* 1, 340 ('Firmus 3') and 1, 395—6 ('Gildo'). The date of 375 follows the judgement of Jan den Boeft *et al.* that, 'It is not possible to establish when precisely the revolt of Firmus was conclusively suppressed; in all likelihood this was achieved some months before the death of Valentinian on 17 November 375.' Jan den Boeft *et al.*, *Philological and Historical Commentary on Ammianus Marcellinus XXIX* (Leiden; Boston: Brill, 2013), 150.

¹⁹⁷ *CTh.* 16.6.1

years later, there was also an African vicarius, Flavian, who was known to be a Donatist sympathiser.¹⁹⁸ In 377 Gratian outlawed rebaptism and ordered the confiscation of property of those who rebaptized.¹⁹⁹ The extent to which this was actually enforced in North Africa given that the vicarius Flavian was sympathetic to the Donatists is unclear. Around the year 385, the Donatist Tyconius was excommunicated by Parmenian. The cause of Tyconius' excommunication was likely a theological rather than political one.²⁰⁰ Tyconius seems to be consistent with the broader Donatist Church's policy of labeling a persecuting imperial authority as antichrist, as is evident in his commentary on the apocalypse.²⁰¹

What is clear from the evidence examined in this chapter is that the Donatist posture towards Rome during the period 313—391 was consistently opportunistic. It is a period which reflects two appeals to Constantine (313), one appeal to Count Taurinus (ca. 340), to Constantine's son Constans (346), and an appeal to an imperial usurper Firmus (ca. 373/5). These appeals are varied enough to avoid easy categorization or the placing of one incident into the category of exception. Moreover, while the initial appeal from the party of Majorinus in 313 sought to keep some distance between the Emperor and the Church, the remainder of the Donatist conduct entangled the emperor and imperial officials in ecclesiastical affairs with no effort to distance imperial authority from the Church, until that authority began to actively persecute. These facts cut against the assessment of Frend that the Donatist movement evolved and changed over the course of the fourth century and became gradually more accepting of imperial involvement in ecclesiastical affairs.²⁰² They also strongly militate against Frend's assertion that the Donatists permitted the emperor to adjudicate temporal matters but resisted him

¹⁹⁸ Augustine, *Ep.* 87.8: 'Flaviano quondam vicario, partis vestrae homini'.

¹⁹⁹ *CTh.* 16.6.2

²⁰⁰ Theological difference is implied in Augustine's brief reference to a work written by Parmenian against Tyconius: Augustine, *c. Ep. Parm.*, 1.1.

²⁰¹ *CPL* 710: for the reconstruction of this difficult text, see Francesco Lo Bue, *The Turin Fragments of Tyconius' Commentary on Revelation*, ed. G.G. Willis, Texts and Studies n.s. 7 (Cambridge: Cambridge University Press, 1963).

²⁰² Frend, *Donatist Church*, 197—9.

when the emperor sought to adjudicate ecclesiastical concerns.²⁰³ The variety of matters on which the Donatists appealed – for imperial recognition and the adjudication of property, in the case of Constantine and Constans, and for repression of their own schismatics in the case of Count Taurinus and the repression of Catholics and schismatics in the case of Firmus – demonstrates that the Donatists were quite comfortable with imperial adjudication of all sorts of matters, both temporal and ecclesiastical. The following chapter will address Donatist appeals in the 390s and early 400s. The years 391/392 have been chosen as the point to begin chapter two because they represent a pivot point for the Donatist Church. 391 was the year that Augustine came to Hippo and the same year that the energetic leader of the Donatist party, Parmenian, died. The election of Parmenian's less capable successor as bishop of Carthage in 391/392, and the opposition to Primian by a deacon named Maximian would all be critical events in the story of Donatism. Those facts have been noted,²⁰⁴ but what has been overlooked is the event that shaped the remainder of the Donatist controversy, the legislation against heretics (*CTh*.16.5.21) from the year 392 that imposed stiff penalties for those convicted of heresy. This confluence of events would mark a turning point in the history of the Donatist Church, and it is this convergence of affairs which forms the subject of the next chapter.

²⁰³ The evidence for the Donatist appeals in this chapter challenges whether the Donatists ever made such a distinction, at least in practice. Cf. Alden Lee Bass, '*Justus sibi lex est*: Donatist Interpretation of Romans 2: 14 and Roman Civil Law', in David Meconi (ed.), *Secular Struggles and Sacred Scripture* (Leiden: Brill, 2015), 162—78.

²⁰⁴ As by Gaumer, 'Election of Primian'.

CHAPTER TWO
WHEN SCHISM BECAME HERESY: DONATIST APPEALS TO ROME
IN THE AGE OF AUGUSTINE

Having examined the body of evidence for Donatist appeals before 391, we now turn to examine Donatist juridical appeals to North African imperial officials in the period from 391 to 430, the time of Augustine's death. It will be shown that following the death of Parmenian in 391 and the election of Primian in 392, the Donatist leadership repeatedly appealed to imperial officials for coercive measures. In particular, in the context of the Maximianist schism and during the so-called Gildo 'revolt' (397/398), the Donatist leadership made frequent petition to North African magistrates. Central to these Donatist appeals was the attempt to persuade imperial officials that the Donatists' own schismatic parties, the Rogatists and Maximianists, should be legally categorized as heretics pursuant to the Theodosian anti-heresy legislation of 392 (*CTh*.16.5.21). The chapter then examines two Donatist legal appeals to Honorius in 404 and 406 for evidence that the Donatist party continued to advance a strategy of actively seeking imperial support against the Catholic party during the 390s and into the early 400s. Such evidence challenges scholarly assessments of the Edict of Unity of 405 or the Conference of 411 as foregone conclusions and also shows that the Donatists continued to rely on all of the legal mechanisms and strategies available to them through the early 400s.

2.1 The Evidence for Donatist Appeals to Rome in the Age of Augustine

The key sources for our knowledge of Donatist appeals during this period are the anti-Donatist writings and letters of Augustine, especially Augustine's *contra Litteras Petiliani*,²⁰⁵ *contra Epistulam Parmeniani*,²⁰⁶ *contra Cresconium*²⁰⁷ and letters 23, 51, 93, and 185. The records of the *Concilia Africae*²⁰⁸ and the *vita Augustini* of Possidius²⁰⁹ also contain important evidence for Donatist appeals, as do the imperial legislation against the Donatists, especially the legislation from 405 (the so-called 'Edict of Unity'),²¹⁰ and the records of the Conference of Carthage in 411 as preserved both in the official *acta* (edited by Serge Lancel)²¹¹ and in Augustine's

²⁰⁵ *Contra litteras Petiliani libri tres*, in Sancti Aureli Augustini *scripta contra Donatistas*, ed. M. Petschenig, 3 vols., CSEL 51—53 (Vienna: F. Tempsky, 1908—10), pars 2 (CSEL 52, 1909), 1—227.

²⁰⁶ *Contra epistulam Parmeniani libri tres*, in Augustini *scripta contra Donatistas*, ed. Petschenig, pars 1 (CSEL 51, 1908), 17—141. This work has been redated from 400 to the early months of 404 by Dolbeau and Hombert. See Augustine, *Vingt-six Sermons au Peuple d'Afrique*, ed. François Dolbeau (Paris: Institut d'Etudes Augustiniennes, 1996), 358–9, and Pierre-Marie Hombert, *Nouvelles Recherches de la Chronologie Augustinienne* (Paris: Institut d'études Augustiniennes, 2000), 89–91. For a slightly later date of late 404 or early 405, see Alfred Schindler, 'Die Unterscheidung von Schisma und Häresie in Gesetzgebung und Polemik gegen den Donatismus', in Ernst Dassman and K. Suso Frank (eds), *Pietas: Festschrift für Bernhard Kötting* (Münster: Aschendorffsche Verlagsbuchhandlung, 1980), 227–36, esp. 231–3.

²⁰⁷ *Contra Cresconium libri quattuor*, in Augustini *scripta contra Donatistas*, ed. M. Petschenig, pars 2 (CSEL 52, 1909), 323—582.

²⁰⁸ *Concilia Africae a. 345 – a. 525*, ed. Munier, CCSL 149.

²⁰⁹ Possidius, *Vita Augustini*, PL 32, 33—66; ed. A.A.R. Bastiaensen, in *Vite dei Santi*, ed. C. Mohrmann, vol. 3, *Vita di Cipriani, Vita di Ambrogio, Vita di Agostino* (Milan: Mondadori, 1975).

²¹⁰ *CTh.* 16.6.4.

²¹¹ Lancel, *Actes, and Gesta conlationis Carthaginensis, anno 411, accedit Sancti Augustini breviculus conlationis*, ed. Serge Lancel, CCSL 149A (Turnhout: Brepols, 1974).

Breviculus Conlotionis.²¹² The imperial panegyrist Claudian's *de Bello Gildonico* is also useful for determining certain of the facts of the so-called 'Gildo revolt' in about the year 397/398.²¹³

A certain degree of suspicion towards much of this evidence is in order given that so much of it was compiled and produced by the Donatists' opponents, often with the explicit goal of defeating the Donatists. Augustine's *Breviculus* of the Conference of Carthage is only one example of this, as it was prepared and distributed to offer Augustine's account of the proceedings at Carthage in 411. Moreover, unlike the evidence for the Donatist appeals discussed in chapter one, the evidence for Donatist appeals during the 390s and early 400s is much less clear from the sources available to us. The Donatist appeals must be pieced together from scattered references to them by Catholic sources, primarily Augustine. At the same time, with the exception of the appeal from 406, it must be said that the fact that the Donatists made these appeals is not seriously contested in the extant sources. Moreover, the recent work of Erika Hermanowicz on this issue has given us a compelling picture of Donatist appeals during the 390s and early 400s.²¹⁴

Thus, as with the evidence for the Donatist appeals proffered in chapter one, the evidence for these appeals, while less clear on its face, is still conclusive and should be given special weight in discerning the Donatists' posture towards Roman power during this period of time. Such evidence is needed to challenge the assessments of the Donatists derived from Donatist assertions such as the famous Donatist *mandatum* at Carthage in 411 ('Januarianus²¹⁵ and the other bishops of the Catholic truth that suffers persecution but does not persecute', *Gesta*

²¹² In *Gesta conlotionis Carthaginensis*, ed. Lancel, 259—306.

²¹³ Claudii Claudiani *De Bello Gildonico*, ed. and tr. E.M. Olechowska (Leiden: Brill, 1978); English tr. in Claudian, ed. and tr. Maurice Platnauer, 2 vols, LCL 135—136 (London: Heinemann, 1922), 1, 98—137.

²¹⁴ Hermanowicz, *Possidius of Calama*.

²¹⁵ As Mandouze observes (*PCBE* 1, *Afrique*, 579 ('IANVARIANVS'), note 1, 'Divers mss. Des documents augustiniens ... présentent la graphie *Ianuarius*.' Lancel's apparatus here (CCSL 149A, 243) records no variant.

conlationis Carthaginensis 3.258).²¹⁶ Significantly, the Donatist posture towards Rome that was demonstrated in the period 313—391 persists through the 390s and into the early 400s. This is important because it belies any narratives of corruption or capitulation in which the Donatist leaders became somewhat enamored with Roman power as time went on and the movement grew older and more established.²¹⁷ Instead, the opportunistic legal strategy evinced by the Donatist leadership during the 390s and early 400s is consistent with and carries forward the legal tactics honed by the Donatist Church in the previous eight decades of its existence in North Africa.

2.2 The Donatist Appeal to Gildo in 397/398

Three events converged to bring an end to Donatist dominance in North Africa. In 391 the politically savvy Donatist bishop Parmenian died and he was replaced by the maladroit Primian in 391/392.²¹⁸ In June of 392, the imperial court issued a law punishing heresy, and this law

²¹⁶ In CCSL 149A, ed. Lancel, 243—51. Other pieces of evidence, such as the Donatist identification of the emperor Honorius with antichrist in the Donatist recension of the *Liber genealogus* (ed. Theodor Mommsen, in *Chronica minora saec. IV. V. VI. VII*, vol. 1, Monumenta Germaniae Historica, Auctorum antiquissimorum 9 (Berlin: Weidmann, 1892), 156—196) must be placed in conversation with the evidence for Donatist appeals for imperial assistance during this same period of time. As with the evidence examined in chapter one, the identification of the emperor as ‘antichrist’ came in the context of Honorius’s legislation (*CTh.* 16.6.4) which outlawed the Donatists in North Africa.

²¹⁷ Tilley makes just this argument in the fourth chapter of *The Bible in Christian North Africa*, entitled ‘New Times, New Ecclesiologies: Parmenian and Tyconius’, where she sees a shift in the Donatist Church towards being more favorable to the establishment midway through the fourth century. ‘At first, the empire and the Catholics had enforced that separation by their persecution of Donatists. Then, when exterior forces no longer drew the line between the church of the martyrs and the church of the *traditores*, Donatists had been forced to draw their own lines between themselves and the Catholics by refusing state support and encouraging a separatist mentality. However, during the latter part of the century, up to the 390s, circumstances changed considerably: the emperor Julian turned against Catholic Christians and brought Donatist bishops back to North Africa from exile. He provided a time of peace and respectability for the Donatists. Donatism became an acceptable church. It grew larger and more diverse. Donatism constituted the majority religion in most, if not all, of North Africa. When even government officials joined it, the Donatist Church had to redefine itself again.’ (Tilley, *Bible* 93)

²¹⁸ Gaumer, ‘Election of Primian’.

would be at the center of the remainder of the Donatist controversy. A year earlier in 391, Augustine came to Hippo where he was quickly made a priest. Intriguingly, Augustine's first extant written work against the Donatists, a letter dated to 392, uses *haeresis* and *schismaticus* interchangeably in the context of the Donatist schism.²¹⁹ The significance of this decision will be made plain in what follows in this chapter because both parties saw the legislation of 392 as an opportunity to legally categorize the other side as 'heretics'. Upon coming to Hippo in 391, Augustine was soon recognized as an advocate for the Catholic cause by Aurelius of Carthage and was quickly promoted through the ranks, largely because the managerial Aurelius recognized in Augustine the polemicist that the Catholic Church needed to combat the Donatists.²²⁰

Theodosian Legislation of 392: CTh. 16.5.21

As was shown in chapter one, Constantine's decision to return confiscated property to clergy who were in communion with him was one of the reasons the Donatists appealed to him in 313. In chapter two, it will be shown that the source of the Donatist appeals during the 390s was also imperial action, this time the legislation from 392 (*CTh.* 16.5.21) which outlawed heresy. For it was the vagueness of this legislation on what constituted 'heresy' that gave the impetus to repeated Donatist appeals of the 390s against their own schismatics, the Maximianists. Given the significance of the Theodosian legislation of 392, it is surprising that so little scholarly attention

²¹⁹ *Ep.* 23.6

²²⁰ Merdinger, *Rome and the African Church*, contains excellent discussions of how Augustine's involvement in these councils increased through the 390s.

has been paid to it in terms of discerning the various tactics of the Donatists and Catholics in the 390s.²²¹ What follows in this chapter is an effort to remedy this.

The legislation of 392 forbade the ordination of heretical clergy, threatened the confiscation of property on which the ordination occurred if the owner had knowledge of it, and punished the clergy who performed the ordination or the owner if he had knowledge of it with a fine of ten talents of gold and/or beating and deportation. In its entirety, the pertinent law, which was an eastern law but perhaps promulgated separately in different zones, reads as follows:

[Emperors Valentinian, Theodosius, and Arcadius] Augustuses to Tatianus

Prætorian Prefect: In the case of heretical false doctrines, We decree that if it should appear that any persons have ordained clerics or should have accepted the office of cleric, they shall be fined ten pounds of gold each. The place in which forbidden practices are attempted shall by all means be added to the resources of Our fisc, if it should become clear that the offense was committed with the connivance of the owner. But if it should appear that the landowner was unaware of such misdeed, inasmuch as it was done secretly, We direct that the chief tenant of such estate, if he should be freeborn, shall pay ten pounds to Our fisc, if he should be descended from servile dregs and should despise the penalty of monetary loss because of his poverty and low degree, he shall be beaten with clubs and condemned to deportation. Furthermore, We especially provide that if such place should be an imperial villa or a villa subject to any public right, and if the chief tenant and the procurator should give permission for the assembly, each

²²¹ One notable exception is Serge Lancel's *Saint Augustine*, where Lancel foregrounds the imperial legislation in his discussion of Augustine's posture towards coercion. 'At the end of the fourth century, the Donatists were under threat from a whole arsenal of repressive measures, notably due to Theodosius the Great. Although formally condemned by the imperial government, they were not doing too badly. Some years later, when this legislation, which had increased, was finally applied, Augustine gave a passing explanation of this paradox: "There was no lack of laws, but there might just as well have been: they were dormant in our hands." [citing *Ep.* 185.11] Targeting heretics, they were inoperative as long as schism was not identified with heresy, and we shall see that this identification would be the major turning-point in the anti-Donatist struggle' (275).

of them shall be fined ten pounds of gold in accordance with the penalty as herein set forth. But if those persons who have been found to perform such mysteries at the same time be revealed to usurp for themselves the title of cleric, We command that each of them shall be fined ten pounds of gold and such fine shall be paid. Given on the seventeenth day before the calends of July at Constantinople in the year of the second consulship of Arcadius Augustus and in the consulship of Rufinus. – 15 June 392.²²²

²²² *CTh.* 16.5.21 (tr. Pharr).

As will be shown, in the period from the mid-390s to 406, on the strength of this legislation,²²³ the Donatist leadership repeatedly appealed to imperial officials for adjudication of

²²³ It was not the first time that the imperial court had acted against heresy. Another law which would be at issue in the Donatist controversy was the earlier legislation from 381 targeting the Manichaeans (*CTh.* 16.5.7). This legislation was directed the Manichaean faith and forbade Manichees to bequeath or inherit property and deprived them of proper burials. This legislation was probably passed in an effort by Theodosius to unite the warring Trinitarian factions of the Church against a common enemy. It is possible that it was the enforcement of this law in North Africa that led Augustine to leave for Italy in 383. There is one instance in which this law may have been imposed against a Donatist landowner. We learn this only from an oblique reference to it in Augustine's *c. Ep. Parm.* 1.12.19: *Sunt et aliae iussiones generales, quibus eis vel faciendi testamenta vel per donationes aliquid conferendi facultas adimitur vel ex donationibus aut testamentis aliquid capiendi. Nam in quadam causa cum homo nobilis imperatoribus supplicasset, quod soror eius, quae de parte Donati fuerit, cum defungeretur, in nescio quos communionis suae et maxime in quendam Augustinum episcopum eorum plurima contulisset, ex illa generali lege praeceptum est, ut omnia fratri restituerentur; ubi etiam circumcellionum mentio facta est, si more suo violenter obsisterent, quo genere auxiliorum et amminiculis repellerentur. Sic enim noti, sic multis proeliis probati sunt, ut de his et supplex imperatoris et imperator tacere non posset.* 'There are other general laws, in which the ability of making wills or of transferring something through gifts is forbidden, as is the ability of accepting anything as gifts or from wills. For in a certain case, a noble man went as suppliant to the emperors because when his sister, who was a member of the Donatist sect, died, she bequeathed most of it to heaven knows what persons of her community, with the greatest amount going to Augustine, some bishop of theirs. From that general law it was commanded that all of her estate should be restored to the brother. Furthermore, when mention of circumcellions was made, if they, according to their custom, violently resist, they would be warded off with armed protection and other support. Indeed, they were so well known, and so proven in their many battles that both the emperor's suppliant and the emperor could not keep silence about them' (My translation). However, following Hermanowicz's judgement (*Possidius of Calama*, 120—4), the instance cited by Augustine concerned a specific rescript from the emperor Honorius which did not create a binding precedent. Moreover, Augustine was dealing with allegations from the Donatist leaders, such as the Donatist advocate Petilian (*PCBE* 1, *Afrique*, 855—68 ('PETILIANVS')), that he had never abandoned the Manichaean faith. W.H.C. Frend, 'Manichaeism in the Struggle between Saint Augustine and Petilian of Constantine', in *Augustinus Magister: Congrès international augustinien, Paris, 21—24 septembre, 1954*, 3 vols (Paris: Etudes Augustiniennes, 1954), 2, 859—66; reprinted in Frend, *Religion Popular and Unpopular in the Early Christian Centuries* (London: Variorum, 1976), no. 13. Augustine and the Catholic party may have desired to distance themselves from using this law lest it stir up bad memories of Augustine's troubled theological past. The critical legislation for our purposes was the anti-heresy law of 392.

disputes with their own schismatics and with the Catholic party.²²⁴ Of course, on its face, the legislation of 392 is vague and ambiguous on just what constitutes ‘heresy’. Given the vagueness and ambiguity of the law, the legal challenge for a party attempting to apply the law against an opponent was to get an imperial judge to determine that one’s opponent was a heretic under the language of the law. It was a tactic which would require a careful juridical strategy.²²⁵ From what we know of the Roman imperial policy in North Africa, the easiest way to get a proconsul to act was to claim a threat to public order. Alternatively, one might claim that a development in North African politics would result in North Africa being taken over by the Eastern government of the empire.²²⁶ The extent to which North Africa was under-policed by Roman soldiers has been shown by Brent Shaw’s excellent work on the North African political environment in late antiquity.²²⁷

All of this would become evident in the 390s. Because ‘heresy’ is not clearly defined in the legislation of 392, there was much room for interpretation in arguing the law against an opponent. The Donatist leaders were the first to see in the law an opportunity to move against their own opponents. Importantly, this law did not punish schism. Moreover, there were no laws

²²⁴ We also have evidence from Augustine of Donatists doing this against the pagans in the late 390s. Augustine, *c. Epist Parm.*, 1.10.16; *contra Gaudentium*, 1.38.51.

²²⁵ Hermanowicz notes, ‘Shrewd (mis)use of the law in order to secure a victory was considered standard strategy by some late antique authors’, and she cites Ammianus Marcellinus, *Res Gestae*, 30.4.8–20, esp. 30.4.11, where Ammianus ‘describes the kind of advocate who manipulates legal texts, whether valid or not, to build his cases’ (*Possidius of Calama*, 123).

²²⁶ Both of these points are things Augustine would learn from watching the appeals of the 390s and put to great effect in the early 400s. A fuller discussion of this is found in chapter four.

²²⁷ Shaw, *Environment and Society*, As we saw with the proconsul Anulinus and the bishop Mensurius, the law seems to have worked best for bishops who had relationships with the imperial proconsuls.

punishing schism as such. So, the Donatist leadership saw the need to categorize their own schismatics as ‘heretics’ in order to have the law of 392 applied against them.²²⁸

Donatist Appeals Pursuant to the Legislation of 392 against Maximianists

The first time the law was applied against a party in North Africa occurred in the aftermath of the election of Primian²²⁹ of Carthage to replace Parmenian. When a faction of the Donatist Church elected the deacon Maximian²³⁰ as bishop, Primian saw the law of 392 as an opportunity to repress these schismatics. Thus, it was Donatist advocates following the Maximianist schism of 394 that would take the lead in this regard.

But first we must look at the origins of the Maximianist schism. Parmenian died in 391 and his successor, Primian, was elected in 392. A group of about one hundred Donatist bishops objected to his election and took the side of Maximian. Maximian was one of Primian’s deacons

²²⁸ See Hermanowicz’s observation that ‘In urging the law to take under its jurisdiction a group not intended for inclusion at the time of promulgation, the Church that we now call Catholic engaged in a forceful rhetoric designed to shape in the minds of all parties that previously separate categories were now synonymous’ (*Possidius of Calama*, 102). However, as will be demonstrated at greater length in chapter five, this assessment of Hermanowicz’s is incorrect. In particular, it can be shown that the Donatists were already labeling the Catholics as heretics much earlier in the fourth century. Already in Optatus’ writings it would appear that Parmenian and other Donatists were merging the categories of heresy and schism. ‘...I am rather surprised, brother Parmenianus, that being a schismatic you have elected to join schismatics with heretics’ (Optatus, 1.10, tr. Edwards). For his part, Optatus emphasizes that the Donatists are schismatics and not heretics: Optatus, 1.10—1.12. However, Optatus wrote both editions of his work at a time *before* the legislation of 392 was on the books. (On the composition of both editions by 384, see Optatus, tr. Edwards, xviii). Moreover, at least two of the leaders of the Donatists, Parmenian and Cresconius, also compiled lists (*indiculi*) of heresies: Optatus, 1.10; Augustine, *c. Cresc.*, 2.4. Parmenian’s list would have been composed before the legislation of 392. There is also the possibility that Petilian called Augustine a ‘heretic’ (see *c. Litt. Petil.*, 3.229, 3.235). For his part, the bishop whose legacy played such a great role in the controversy, Cyprian of Carthage, had argued that schism and heresy were interchangeable: Cyprian, *Ep.* 73; Geoffrey D. Dunn, ‘Heresy and Schism According to Cyprian of Carthage’, *JTS* 55.2 (2004): 551—74.

²²⁹ *PCBE* 1, *Afrique*, 905—13 (‘PRIMIANVS 1’).

²³⁰ *PCBE* 1, *Afrique*, 719—22 (‘MAXIMIANVS 3’).

and possibly a relative of Donatus of Carthage.²³¹ At a Council in Bagai in 394, three hundred and ten Donatist bishops condemned the bishops who supported Maximian and categorized them as ‘heretics’ and compared them to Korah and Abiram who had gone out of the camp.²³² The facts of the Maximianist schism repeat many elements of the election of Caecilian of 306, not least that Maximian seems to have had the support of a wealthy woman.²³³ Hermanowicz’s study of this period is vital to understanding the Donatists’ legal strategies in the next few years during the so-called Gildo revolt,²³⁴ which is better described as an imperial usurpation.²³⁵ It would seem that Donatist success with courts did not really begin until the mid-late 390s when the revolt was under way. This fact alone shows the complicity of the Donatists with Gildo and those loyal to him. Moreover, the period in which the ‘Gildo revolt’ occurred was an important period for a number of reasons, not least because of the instability created with the death of Theodosius and the installation of Stilicho²³⁶ as regent for the young Honorius in the West in the mid-390s. It is little wonder that Stilicho was not able to get the Senate to declare the usurper Gildo a public enemy and send an army to North Africa until 398.²³⁷

²³¹ Augustine refers to him as *Donati propinquus* in *Ep.* 43.9.26

²³² The fragments of the *Sententiae Concilii Bagaiensis* which survive (especially in *c. Cresc.*, book 4) are collected by Petschenig in *Augustini scripta contra Donatistas*, pars 3 (CSEL 53, 1910), 276—8. Dathan, Korah, and Abiram appear in *c. Cresc.*, 4.16.

²³³ A point Augustine is very happy to make: Augustine, *Ep.* 43. 9. 26; *Enarrationes in Psalmos*. 36, 19

²³⁴ Shaw has analyzed the ‘Gildo revolt’ with the same lens applied to the ‘Firmus revolt’ and likewise concluded that Gildo would best be categorized as an imperial usurper. See Shaw, *Sacred Violence*, chapters 14 and 15 and Appendix F. This is *contra* Frend, who argued for Gildo as a proto-revolutionary leader: Frend, *Donatist Church*, chapter 14, ‘The Rule of Optatus and Gildo’. Following Shaw, this thesis argues for a new synthesis of the evidence in that the Donatists’ repeated appeals for aid from Gildo and the magistrates loyal to him evince a great deal of comfort with imperial officials by the Donatist leadership during this period.

²³⁵ Hermanowicz, *Possidius of Calama*. Much of what follows is heavily indebted to her work.

²³⁶ For the abundant sources on Stilicho, see *PLRE* 1, 853—8 (‘Flavius Stilicho’).

²³⁷ Frend, *Donatist Church*, 224—5.

Around the year 397/398, sensing the instability in Rome with the youthful Honorius and his ‘regent’ Stilicho, the *comes* Gildo²³⁸ attempted to carve out an independent kingdom for himself in North Africa and to form an alliance with the Eastern emperor, Honorius’s brother, Arcadius. In the account of the events provided by the *de bello Gildonico*, Claudian reports that Stilicho heroically raised an army with the support of Honorius and sent that army to North Africa under the command of Gildo’s brother, Mascezel.²³⁹ This expedition was stunningly successful and Gildo was slain and the rebellion quickly put down in the year 398.²⁴⁰ Mascezel then later conveniently drowned in a river in Italy, probably at the instigation of Stilicho, who had had enough of these North African brothers. Stilicho then sent Bathanarius,²⁴¹ his brother-in-law, to North Africa in 401, and Bathanarius would be the *Comes Africae* for the period from 401 until 408, when he was recalled to Italy and executed as part of the purge of Stilicho and Stilicho’s family by Honorius.²⁴²

Gildo ruled North Africa as a quasi-independent territory during the period of his revolt. During roughly this same period of the mid-late 390s, the Donatist leaders appeared before four proconsuls of Africa – including at least Herodes and Seranus – and argued to have their schismatics, the Maximianists, categorized as heretics.²⁴³ It would seem that they were

²³⁸ *PLRE* 1, 395—6 (‘Gildo’).

²³⁹ Frend, *Donatist Church*, 225. Claudian, *de Bello Gildonico*, 415—16: ‘When this advice had been accepted by his son-in-law [Honorius], Stilicho made ready for war the most famous regiments in the army ...’ (tr. Platnauer). Mascezel (*PLRE* 1, 566 (‘Mascezel’)) was introduced by Claudian at 389—91.

²⁴⁰ Frend, *Donatist Church*, 225.

²⁴¹ *PLRE* 2, 221 (‘BATHANARIVS’).

²⁴² Frend, *Donatist Church*, 270.

²⁴³ Augustine refers to a *postulatio* before Herodes (*PLRE* 1, 426—7 (‘FLAVIVS HERODES 4’)) at *c. Cresc.* 4.56.62, to proceedings before Seranus (*PLRE* 2, 992, ‘SERANVS’) at *c. Cresc.* 4.48.58, and to the judgement of an unnamed proconsul at *En. in Ps.* 57.15. At *c. Cresc.* 4.3.3 Augustine has the *partes Primiani* pursuing the Maximianists ‘before four or more proconsuls’. See also Hermanowicz’s discussion of the dating of these appeals and the identity of the proconsuls during this period in *Possidius of Calama*, 127—8, with 128, note 99.

successful, although the records are unclear on details.²⁴⁴ Perhaps equally telling is that we have records of the Catholic party unsuccessfully attempting to do the same thing by labeling the Donatist bishop, Primian, a heretic and attempting to have him fined ten pounds of gold.²⁴⁵ It would seem that during the mid-late 390s, a number of North African officials were largely favorable to the Donatists. Whether that involved a full alliance between the Donatists and Gildo and/or a number of North African proconsuls during this time, or simply support for a portion of the Donatist communion²⁴⁶ we do not know. What does seem evident from the sources is that the Donatists were able to use soldiers loyal to Gildo and/or proconsuls favorable to them to repossess churches in the hands of the schismatic Maximianists and perhaps churches held by Catholics as well.²⁴⁷ In particular, around the year 395,²⁴⁸ certain elements of the Donatist church allied with Gildo and Seranus began to repossess Maximianist and Catholic churches. Writing to

²⁴⁴ Hermanowicz, *Possidius of Calama*, 128.

²⁴⁵ *Ibid.*, 104.

²⁴⁶ Chief among them was the Donatist bishop Optatus of Thamugadi, who was arrested after the fall of Gildo and died in prison (*PCBE* 1, *Afrique*, 797—801 (('OPTATVS 2')). (Frend, *Donatist Church*, 226, with note 1, says that Optatus was 'executed as a rebel', citing Augustine, *c. Litt. Petil.* 2.92.209, which, however, merely says that '*tali genere mortis exstinctus est*' as other Donatist bishops who had died in prison. Frend (225—6) also notes that Optatus of Thamugadi was later disowned by the Donatist leadership (in an effort to disconnect the Donatist party from Gildo): Augustine is willing to concede to Petilian that he disapproves of what Optatus did (*c. Litt. Petil.* 2.23.54). But surely the fact that Optatus was executed as a rebel had something to do with the rest of the Donatist leadership distancing itself from him.

²⁴⁷ For example, Augustine's polemical use of the Maximianist schism is quite evident from the text of the *c. Cresconium*, especially book four. *Inter alia*, he sought to demonstrate that the condemnations of the majority Donatist party at Bagai in 394 showed the Donatist leadership's hypocrisy because the Donatist leadership subsequently allowed many of the same Maximianists to return to the Donatist fold without requiring rebaptism, as they would of Catholics whom they had likewise condemned with the same sort of denunciations. The *c. Cresconium* will be addressed at more length in chapter five, but for the purposes of this chapter, Augustine's allegations about Donatists' use of the courts to repress the Maximianists remain undisputed in the records and have been demonstrated by Hermanowicz.

²⁴⁸ Hermanowicz, *Possidius of Calama*, 104, and Lancel, *Saint Augustine*, 275, are both uncertain about the date of 395.

Alypius²⁴⁹ while still a priest, Augustine reported the attempts of Optatus and his followers to repossess churches, including one at Asna.²⁵⁰ Augustine mentions that the case was currently being litigated in the courts.²⁵¹ The Catholic party appealed to the *vicarius* Seranus and argued that the legislation of 392 should be imposed against the Donatists.²⁵² While the records are limited, the Catholic appeal to Seranus was unsuccessful.²⁵³

Following the defeat of the Donatists and Gildo in 398, the Donatists' fortunes changed for good. Writing the year after the suppression of Gildo's forces (399/400), Augustine

²⁴⁹ Augustine, *Ep.* 29 (probably written in 395: see Hermanowicz, *Possidius of Calama*, 104).

²⁵⁰ *Ep.* 29.12. See also, Hermanowicz, *Possidius of Calama*, 104, noting *inter alia* that the location of Asna is unknown.

²⁵¹ Augustine, *Ep.* 29.5.

²⁵² On Augustine's knowledge of the law see Hermanowicz, *Possidius of Calama*, 104: 'A passage of the *Contra epistulam Parmeniani* (1.12.19) confirms Augustine's familiarity with law in claiming that it was successfully used by the Catholics in order to chastise the Donatists: "Among them there is one general law against all who wish that they be called Christians; indeed, they have no communion with the Catholic Church, but instead they are gathered, apart, amongst their own groups; the law stipulates the following: that the one who ordains clerics or himself is ordained will be punished with a fine of ten pounds of gold: the property itself on which the unholy separatist movement gathers will be remitted to the imperial fisc."' Hermanowicz (whose judgement is followed here) concludes, 'Without question, Augustine is referring to Theodosius' law of 392, as the words and their order are directly taken from that imperial letter,' and adds that, 'The re-dating of *Contra epistulam Parmeniani*, along with a lack of factual information regarding the particulars by which the Catholics called forth this law, makes it difficult to determine to which episode, exactly, Augustine is here referring. In any event, his knowledge of the law is certain' (104).

²⁵³ Augustine's statement in the *Contra epistulam Parmeniani* 2.83.184 that 'none of you [Donatists] have ever paid to this very day', according to Hermanowicz, 'clearly means that the Catholics lost their case against Optatus, if in fact Serenus agreed to hear it' (*Possidius of Calama*, 105) – though Augustine's claim is not necessarily accurate. As we will see, in 404 the Catholic party got a fine of ten pounds of gold imposed against Crispinus but then the fine was never paid because the Catholic party petitioned that the penalty be withheld. Still, given the political situation of the 390s, it is probable that the Catholics were unsuccessful with magistrates loyal to Gildo.

challenged the Donatist bishop Crispinus for an explanation about the Donatist use of judges against the Maximianists:²⁵⁴

You likewise often raise as an objection to us that we persecute you by earthly powers. On this point I do not want to discuss either what you deserve for the terribleness of so great a sacrilege or how much Christian kindness restrains us. This is what I say: If this is a crime, why did you fiercely attack the same Maximianists through judges sent by those emperors, whom our communion begot through the gospel, and why did you by the roar of controversies, by the power of ordinances, and by the assault of troops drive them from the basilicas which they had and in which they were at the time of the division? What they suffered in individual places during that conflict is attested to by recent traces of events. The records show what orders were given; the lands in which the holy memory of that notorious Optatus, your tribune, is venerated cry out what was done. (Augustine, *Ep.* 51.3)²⁵⁵

In 401, the Catholic party decided to capitalize on the Maximianist schism by sending missions to Numidia.²⁵⁶ They also sought to procure the evidence of Donatist legal maneuvers

²⁵⁴ Augustine, *Ep.* 51.3.

²⁵⁵ Tr. Teske, *Letters I — 99*, 199—200.

²⁵⁶ *Registri Ecclesiae Carthaginensis Excerpta* (ed. Munier, *Concilia Africae*, 182—232), 69, from Conference of Carthage, 13 Sept. 401 (CCSL 149, 200—1). See also, A.-C. De Veer, ‘L’exploitation du schisme maximianiste par saint Augustin dans sa lutte contre le Donatisme’, *Recherches Augustiniennes* 3 (1965): 219–37.

by obtaining *gesta municipalia*, the records of planned debates.²⁵⁷ It was a telling decision, for the Catholics were learning about Donatist legal strategy in order to use those strategies polemically against the Donatists, and learn from them at the same time. The remainder of Augustine's writings are replete with examples of just this.²⁵⁸ The decision to study the Donatists' tactics *vis-à-vis* imperial officials confirms Erika Hermanowicz's judgement that it was these maneuvers by the Donatists that may have set the precedent for the Catholic party in the early fifth century.²⁵⁹ At the same time, Stilicho's brother-in-law, Bathanarius, came to North Africa as *Comes Africae*.²⁶⁰ The failure of the Gildo revolt was giving the Catholic party an opportunity to tie the Donatists to the failed usurper. In 402, writing again to Crispinus, Augustine threatened that the fine of ten pounds of gold would be imposed against him for rebaptizing Catholics.²⁶¹ But it

²⁵⁷ *Registri Excerpta* 69: 'Deinde placuit ut his peractis legati etiam praedicandae pacis atque unitatis, sine qua salus christiana non potest obtineri, e numero nostro ad ipsorum Donatistarum sive quos habent episcopos sive ad plebes mittantur, per quos omnibus in notitiam perferatur, quam nihil habeant quod adversus ecclesiam catholicam iuste possint dicere, maxime ut manifestum fiat omnibus per gesta etiam municipalia, propter documentorum firmitatem.' 'Then it seemed good that, when these things had been done, legates for the preaching of peace and unity, without which it is not possible to obtain Christian salvation, should be sent from our number to those whom those Donatists regard as bishops or to their congregations – legates, through whom it might be brought to the notice of all that they have nothing which they are able to say justly against the Catholic Church, especially that this might become manifest to all through municipal records as well, because of the secure force of documents' (my translation). See also Hermanowicz, *Possidius of Calama*, 137; Frend, *Donatist Church*, 252.

²⁵⁸ As Augustine, *Epp.* 93, 185.

²⁵⁹ Hermanowicz, *Possidius of Calama*, 129: 'The strategy which eventually allowed the Catholics to force the Donatists into unity may have originated within the Donatist Church.'

²⁶⁰ Frend, *Donatist Church*, 228.

²⁶¹ Augustine, *Ep.* 66.1: 'You should, of course, fear God, but since in rebaptizing the people of Mappala you wanted to be feared as a man, why should an imperial order not have such force in a province if a provincial order has such force in a town? If you compare the persons, you are only a landowner; he is the emperor. If you compare the places, you are in charge of a rural town; he is in charge of an empire. If you compare the causes, he was acting to mend a division; you were acting to divide a unity. But we do not want to cause you fear of a man. *For we could have had you pay ten pounds of gold in accord with the imperial orders.* Do you perhaps not have the means to pay what those who rebaptize are ordered to pay, while you spend a lot to buy those whom you rebaptize?' (tr. Teske, *Letters 1 — 99*, 257, emphasis added).

would take the events of 403/404 to give the Catholic party its first real chance to have a Donatist leader convicted of heresy.²⁶²

2.3 The Donatist Appeal to Honorius in 404

The summer of 403 would prove decisive. The incidents from this summer show that the Donatists were still operating under the assumption of imperial support. They were quickly losing that support. First, sometime in the summer of 403 a Catholic presbyter named Restitutus²⁶³ was assaulted and beaten by Donatist bandits in a villa outside Hippo.²⁶⁴ They imprisoned him, ritually humiliating him by smearing him in mud and displaying him to the public, and beat him with clubs. Because the incident occurred under the jurisdiction of the Donatist bishop of Hippo, Proculeianus,²⁶⁵ Restitutus was released at the insistence of Proculeianus. Augustine relates that Proculeianus only procured Restitutus' release because the Catholic bishops had threatened legal action.²⁶⁶ When the Catholic bishops then brought the case before the city council of Hippo, the council refused to act, despite Augustine's repeated efforts.

It is possible, but unlikely, that the Donatist ruffians understood the beating with clubs given to Restitutus as a punishment under the imperial legislation of 392, for this assault was not only intended to humiliate him but was consistent with the punishment of that imperial legislation. The puzzling lack of action by the city council could then be explained if the attack is seen not as a random act of Donatist violence against Catholics, but rather the Donatists' enforcement of the imperial legislation of 392, which threatened such punishment for a heretic:

²⁶² With the qualification mentioned above of the one other unclear instance in which the Catholics might have gotten the anti-Manichaen legislation of 381 (*CTh.* 16.5.7) imposed against a Donatist landowner.

²⁶³ *PCBE* 1, *Afrique*, 972 ('RESTITUTVS 6').

²⁶⁴ Augustine, *Epp.* 105.2, 88.6, and *c. Cresc.* 3.48. See Hermanowicz, *Possidius of Calama*, 106—8, and her discussion of these events.

²⁶⁵ *PCBE* 1, *Afrique*, 924—6 (PROCVLIANVS').

²⁶⁶ Hermanowicz, *Possidius of Calama*, 107. See also *c. Cresc.* 3.43 for Augustine's descriptions of the same sorts of attacks on men named Servus and Maximianus.

‘if he descends from servile dregs and disdains the penalty of a fine, because his poverty and wretched state, he will be *beaten with clubs* and sentenced to deportation’.²⁶⁷ However, this is unlikely, and the attack is more likely to have been an act of violence by Donatist ruffians that became useful to Catholic polemicists like Augustine.

A Catholic conference was held the same year in which the Catholic party determined to ask the Donatists to engage in public debate.²⁶⁸ It was a clever tactic by the Catholic party. The recent refusal of the city council to take action against the Donatists demonstrated that the Donatists still had considerable power among the imperial officials. The Donatists were still in the majority. They did not need to debate. But to flatly refuse to debate could be framed by Catholic advocates as obstructionism. The Catholic party, led by Augustine, had placed the Donatists in an untenable position. It is a rhetorical tactic designed to use an opponent’s weight against him, something that Augustine would repeatedly return to in the controversy. And it worked. The Donatists, in power for more than a decade, were backed into a corner and being painted as obstructionists who had supported the recent usurper.

In response, they resorted to violence and obstruction, which only played into Augustine’s strategy, as we shall see. Around this same time, Possidius relates that Augustine was nearly ambushed by Donatists on his way to preach outside the city of Hippo.²⁶⁹

²⁶⁷ *CTh.* 16.5.21 (my translation, emphasis added)

²⁶⁸ See Hermanowicz, *Possidius of Calama*, 108—13, discussing this Catholic strategy. According to the *Registri Excerpta* 92, from Conference of Carthage, 25 August 403 (CCSL 149, 149, 210—11), the purpose was that ‘when they engage in discussion about peace and sometimes, at last, with the help of the Lord our God, ancient error comes to an end, weak souls and ignorant peoples might not perish through impious dissent because of the animosity of men’ (my translation); ‘*cum pace discutiant, et tandem aliquando, adiuvante Domino Deo nostro, finem veteris error accipiat, ne, propter animositatem hominum, infirmæ animæ et ignari populi sacrilega dissensione dispareant.*’ The Donatist refusal to debate is utilized well by Augustine in the *c. Cresc.*, in which he labeled the Donatists as heretics due to the fact that their schism was inveterate and thus should be considered heresy: *haeresis autem schisma inveteratum* (*c. Cresc.* 2.7), a view reflected in the imperial legislation of 405: *CTh.* 16.6.4: *Thus it happened that a heresy was born from a schism.*

²⁶⁹ Possidius, *Vita Aug.*, 12. See also, Hermanowicz, *Possidius of Calama*, 69, and her dating of the event to about six months before the attack on Possidius himself, a judgement followed here.

While the Donatist leaders equivocated about whether they wished to engage in public debate, another incident occurred which further shifted the situation in favor of the Catholic party. Possidius of Calama engaged in a public debate of sorts with the bishop Crispinus²⁷⁰ and during the debate Crispinus insulted Possidius but refused to respond directly to Possidius' arguments. In all probability, Crispinus was unsure what tack to take with respect to the Catholic offer for debate.²⁷¹ A few days later, Possidius was assaulted by an armed group of Donatist ruffians when he was chased to a farm house which was set alight. He was dragged from the house, rolled in manure, and beaten.²⁷² As Hermanowicz points out, the attack was calculated to humiliate but not to permanently harm Possidius.²⁷³ As with the attack on Restitutius, the beating was also probably understood by the Donatists as an effort to enforce the penalties for heresy under the Theodosian anti-heresy legislation of 392. The attack was organized and led by the Donatist presbyter (also named Crispinus),²⁷⁴ who was perhaps a relative of the Donatist bishop Crispinus.²⁷⁵ The Donatists seem to have been emboldened in their actions here by the refusal of the city council to act.

This time, the Catholic party was able to get the North African proconsul to make an adjudication that the Donatist bishop was a heretic. Interestingly, the *defensor ecclesiae* (whose name is unknown to us) was initially unsuccessful in getting a conviction of Crispinus before the

²⁷⁰ PCBE 1, *Afrique*, 252—3 ('CRISPINVS 1').

²⁷¹ Hermanowicz, *Possidius of Calama*, 111--13, on Donatist response to the Catholic offer to debate.

²⁷² Described in graphic detail in Augustine, *c. Cresc.* 3.46.50.

²⁷³ Hermanowicz, *Possidius of Calama*, 114.

²⁷⁴ PCBE 1, *Afrique*, 254 ('CRISPINVS 2').

²⁷⁵ Augustine, *c. Cresc.* 3.46.50: 'alius Crispinus eius presbyter et ut perhibetur propinquus'.

proconsul.²⁷⁶ It seems probable that the *defensor ecclesiae* was favorable to the Donatists and chose not to pursue the case vigorously. But then the *defensor ecclesiae* was replaced, and the conviction of Crispinus was obtained.²⁷⁷ We know very little about the details. We do know that the imperial proconsul made a ruling finding Crispinus a heretic and that this occurred sometime around 404.²⁷⁸ But many other facts are unknown. Even the identity of the proconsul is unknown.²⁷⁹ Septiminus was proconsul in 403, and Diotimus and perhaps Caecilianus in 405, but

²⁷⁶ For the role of the *defensor ecclesiae*, see Merdinger, *Rome and the African Church*, 105. See also *Registri Excerpta* 75, from Conference of Carthage 13 Sept. 401 (CCSL 149, 202): *DE DEFENSORIBVS ECCLESIARVM AB IMPERATORE POSCENDIS. Ab imperatoribus universis uisum est postulandum, propter afflictionem pauperum, quorum molestiis sine intermissione fatigatur ecclesia, ut defensores eis aduersus potentias diuitum cum episcoporum prouisione delegentur*; ‘On asking the Emperor for defenders of the churches. It seemed good to all that, because of the affliction of the poor, by whose troubles the Church is continually vexed, the emperors be asked that defenders be assigned for them, with the care of the bishops, against the power of the rich’ (my translation). Also, *Registri Excerpta* 97, from Conference of Carthage, 13 June 407 (CCSL 149, 215): *VT AB IMPERATORIBVS POSTVLETUR ADVOCATORVM DEFENSIO PRO CAVSIS ECCLESIAE. Placuit etiam ut petant ex nomine prouinciarum omnium legati perrrecturi, Vincentius et Fortunatianus, a gloriosissimis imperatoribus, ut dent facultatem defensores constituendi scholasticos, qui in actu sunt uel in munere defensionis causarum, ut more sacerdotum prouinciae, idem ipsi qui defensionem ecclesiarum susceperint, habeant facultatem pro negotiis ecclesiarum, quoties necessitas flagitauerit, uel ad obsistendum obrepentibus, uel ad necessaria suggerenda, ingredi iudicum secretaria*; ‘That the Emperors be asked for the defense of advocates for Church cases. It seemed good also that the legates who are to go in the name of all the provinces, Vincentius and Fortunatianus, ask the most glorious Emperors to give leave to appoint legal defenders who are involved in or employed in defending cases, so that, like the bishops of the province, those who have undertaken the defense of the churches might have leave, as often as necessity demands, to enter the judges’ chambers on the business of the churches, either to oppose things that are brought up or to add necessary points’ (my translation). The *defensor ecclesiae* is also mentioned in the *Codex Theodosianus* 16.2.38 with Honorius writing (in 407) to the proconsul of Africa confirming the special status of North African clergy.

²⁷⁷ As with the legal precedents set by Constantine and discussed in chapter one, it bears noting how important the North African context was for developing the so-called bishops’ courts. For more on the so-called bishops’ court, see Humfress ‘Bishops and Law Courts’.

²⁷⁸ For date of January 404, see Hermanowicz, *Possidius of Calama*, 139.

²⁷⁹ *Ibid.*, 117—18.

the name of the proconsul in 404 is unknown.²⁸⁰ Importantly, though, we do know that the outcome of the trial before the proconsul was that Crispinus was found guilty of ‘heresy’ and was fined ten pounds of gold for instigating an attack on a Catholic bishop.²⁸¹ Of course, this fine of ten pounds of gold was the penalty for heresy as set forth in the legislation of 392. The Catholic party then immediately requested that the penalty be withheld.²⁸²

²⁸⁰ *PLRE* 2, 991 (‘SEPTIMINVS 1’); 2, 368 (‘FL. PIONIVS DIOTIMVS 2’); 2, 244—5 (‘Caecilianus 1’); with the *fasti* for the proconsuls of Africa (2, 1224).

²⁸¹ Possidius, *Vita Aug.*, 12. See also Augustine, *Sermon* 162A (*sermones Denis* 19).8: ‘Recently judgment was given against Crispinus as a heretic. But what did he say? “I wasn’t convicted by an evangelical judgment, was I?” His reason for asserting that he wasn’t really defeated, is that it was the proconsul who gave judgment against him, not Christ. So if he values a human judgment so lightly, why did he appeal from the proconsul to the emperor? He himself had demanded to be judged by the proconsul; he said himself, “Hear my case, I’m not a heretic.” You requested his judgment, and does his judgment displease you? Why? Because it went against you. If he had given judgment for you, it would have been a good judgment; because he gave it against you, it was a bad judgment. Before he gave judgment, he was a good judge, and you said to him, “I’m not a heretic; hear my case.” “But the proconsul,” he says, “gave judgment according to the laws of the emperors, not according to the laws of the gospel.” Suppose he did do that, suppose the proconsul did give judgment according to the laws of the emperors; so if the emperors make bad laws against you, why did you appeal from the proconsul to their tribunal? Were there already imperial laws in force against you, or weren’t there any as yet? If there weren’t any yet, the proconsul did not give judgment according to them; if they were already in force, do you imagine the emperors are going to give judgment for you against their own laws? Then I have another question for you: about these imperial laws against you; what happened? Instruct me, please. It’s well known, you see, and nobody denies it, that there are many imperial laws against them.’ Tr. Edmund Hill, *Sermons (148—183) on the New Testament*, The Works of Saint Augustine, A New Translation for the 21st Century, ed. John E. Rotelle, III/5 (Hyde Park, NY: New City Press, 1992), 158—9. Discussion in Hermanowicz, *Possidius of Calama*, 116—17.

²⁸² Augustine, *c. Cresc.* 3.47.51: *intercedenti Possidio non est compulsus exsolvere*. For popular interest in the case, *Vita Aug.* 12.7: ‘Both bishops of Calama came to the controversy and contended with each other a third time about that same difference of communion. A great multitude of the Christian congregations were awaiting the outcome of the case, both in Carthage and throughout Africa. And that Crispinus was declared a heretic by the written judgement of the proconsul’ (my translation); *ad controversiam ambo illi Calamenses episcopi venerunt, et de ipsa diversa communione tertio conflictum secum egerunt, magna populorum Christianorum multitudine causae exitum et apud Carthaginem et per totam Africam exspectante, atque ille est Crispinus proconsulari et libellari sententia pronuntiatus haereticus*. See discussion in Hermanowicz, *Possidius of Calama*, 115—16, with 115, note 65, for the rare word *libellaris*.

In June of 404, the Catholics held a conference after which it was decided to send two bishops, Evodius²⁸³ and Theasius,²⁸⁴ to Rome with a petition requesting that Honorius reissue previous laws against the Manichees,²⁸⁵ and confirm the law from 392 against heretics.²⁸⁶

The Donatist party appealed the case to the emperor Honorius in 404 and both sides sent representatives to Ravenna.²⁸⁷ The language of the Donatist appeal is lost, and what we know about the appeal comes largely from Possidius' *Vita Augustini*. As with so many other Donatist appeals, the fact that the appeal was made by the Donatists is uncontested in any of the sources.²⁸⁸

Donatist experience through the fourth century had taught them the variability of responses from emperors to appeals. Constantine, although initially and then finally adverse to them, had wavered in his dealings with them. Julian had responded favorably. The Donatists probably felt they had a real possibility of success with the emperor Honorius. Their recent

²⁸³ PCBE 1, *Afrique*, 366—73 ('EVODIVS 1').

²⁸⁴ PCBE 1, *Afrique*, 1105—6 ('THEASIVS').

²⁸⁵ CTh. 16.5.7.

²⁸⁶ CTh. 16.5.21. Hermanowicz comments on how this was blurring distinctions and that a ruling against a specific Donatist was not a general law that could be reissued like this: *Possidius of Calama*, 125.

²⁸⁷ Augustine, *Ep.* 88.7 and 185.25. Hermanowicz, *Possidius of Calama*, 146—7.

²⁸⁸ Possidius, *Vita Aug.*, 12: 'So when he had ungratefully made appeal to the most pious Princeps, the Emperor gave the fitting response to the action, and the rule was established that no place at all should be open to Donatist heretics and that they ought to be held everywhere to the force of all the laws brought against heretics. By this the judge and his staff and the same Crispinus were ordered to pay ten pounds of gold each to the treasury, which had not previously been exacted. But at once the Catholic bishops, especially Augustine of holy memory, took care that that condemnation applied to all be remitted by the gracious forbearance of the Emperor. And with the Lord's help that was accomplished. The Church grew greatly through that diligence and holy zeal' (my translation). The fact that Honorius sought to have the penalty enforced against the unknown proconsul who made this judgement but failed to carry it out in full is one interesting glimpse into the stakes involved for proconsuls who dealt with appeals from either side.

successes in North Africa as recently as 402/403 when the city council of Hippo had refused to penalize Donatists for beating Restitutus must have given them hope.

However, Augustine was able to skillfully harness the imperial court's fears about instability in North Africa by tying the Donatists closely to the recently failed revolt under Gildo.²⁸⁹ Augustine's strategy in this regard will be discussed at more length in chapter four. The outcome of the Donatist appeal was the Emperor Honorius's Edict of Unity in February 405 which outlawed the Donatist party and branded the schismatic Donatists as heretics, subject to the imperial anti-heresy legislation of Honorius' father, Theodosius.²⁹⁰

Interestingly, the emperor also wrote to the proconsul and threatened to impose the fine of ten talents of gold against him for failing to impose that penalty against the Donatist Crispinus.²⁹¹ It was a dangerous game for all parties. The complicated nature of these negotiations can be seen if one looks at them through the eyes of this unnamed imperial proconsul. He ruled in favor of the Catholic party and then likewise suspended the sentence at their request, but then faced the wrath of the emperor for indulging the Catholic party's request, even though the emperor had ruled in favor of the Catholic party himself.²⁹²

2.4 The Donatist Appeal to Honorius in 406

Sometime in 406 the Donatists probably requested that Honorius lift the imperial legislation of 405. It must be stated at the outset that this is the Donatist appeal for which we have the least

²⁸⁹ See especially, Augustine's efforts in this regard which make up so much of the *contra Litteras Petiliani* and *contra Cresconium*.

²⁹⁰ *CTh.* 16.5.38. As on previous occasions in the fourth century, the Emperor's refusal to favor the Donatist party resulted in the Donatists' identification of the emperor with antichrist, seen most explicitly in the Donatist recension of the *Liber genealogus* dating from this same time. This will be taken up at more length in chapter four.

²⁹¹ Possidius, *Vita Aug.*, 12.

²⁹² Neil B. McLynn, 'Augustine's Roman Empire', *AugStud* 30.2 (1999): 29—44, at 36—37. The complicated aspects of these negotiations between ecclesiastical and imperial parties will be discussed in chapter four when dealing with Augustine's negotiation tactics against the Donatists.

evidence. We only know about this appeal because it was alleged by the Catholic party at the Conference of 411 as a technical matter of legal procedure. In brief, the Donatists' contended at 411 that the Catholics were the prosecuting party because the Catholics had appealed the matter to Honorius in 410.²⁹³ *Inter alia*, the Donatist advocates at 411 wanted to position the Catholic party as the prosecuting party in order to place the Catholics in the role of persecutors and also to score certain procedural points against them. As will be shown at more length in chapter four, because there were penalties for making false claims, if the Donatists succeeded in having the Catholics identified as the prosecuting party, they could have the Catholics penalized if they could demonstrate that the Catholic allegations were false.²⁹⁴ In response, the Catholics alleged that the Donatists had actually appealed the matter to Honorius and that the Conference was proceeding as a result of the Donatist appeal to Honorius in 406. No evidence of this Donatist appeal remains, and the only evidence for it consists of the Catholic allegations at 411.²⁹⁵ The Donatists strenuously objected to the evidence of the appeal, as well they should have. It is a point that will be taken up at the beginning of chapter four.

But first, chapter three will address the Donatist appeals from a different angle entirely. While chapters one and two have taken up the Donatists' appeals to Rome, chapter three looks at evidence for Donatist alliances with 'Arian' parties through the fourth century and into the fifth.

²⁹³ For example, see *Gesta conlationis Carthaginiensis*, 3.258. See also Frend's discussion of these negotiations at the conference of 411 in Frend, *Donatist Church*, 321. This will be treated at greater length in chapter four.

²⁹⁴ Frend, *Donatist Church*, 321.

²⁹⁵ See Hermanowicz's discussion of this in *Possidius of Calama*, chapter 6. This will be taken up in chapter four of this thesis.

CHAPTER THREE

STRANGE BEDFELLOWS?: THE ‘ARIAN’ APPEAL TO DONATUS RECONSIDERED

Chapter three offers a critical examination of Augustine’s discovery of evidence for an ‘Arian’ appeal to the Donatists after the Council of Serdica as related in his *Ep.* 44, and goes on to analyze Augustine’s use of that evidence in two separate cases. In the first instance, Augustine’s use of evidence for the ‘Arian’ appeal to the Donatists in the *contra Cresconium* is explored, and it is shown that Augustine’s strategy was specifically calibrated to reinforce the imperial court’s fears about an alliance between the Donatists in North Africa and the Eastern Empire. Coming in the immediate aftermath of Gildo’s failed attempt to ally North Africa with the Eastern Empire, Augustine’s strategy was specifically calculated to get the imperial authorities to see the Donatists as an ongoing threat to the unity of the Western Empire. In the second instance, which is found in Augustine’s much later letter to Boniface, in 417, Augustine’s strategy is surprisingly reserved on the subject of the ‘Arian’ appeal to the Donatists. This reticence of Augustine’s to carry the allegation forward is explained by demonstrating the particular objective Augustine had in this letter to Boniface, which was to allege enough to Boniface to gently encourage Boniface’s concern that the Donatists might ally themselves with the ‘Arian’ Goths in his army, but not so much that Boniface would actively repress the Donatists with military force as Macarius had done so unadvisedly in 347.

In both instances, Augustine’s use of the evidence for the ‘Arian’ appeal to the Donatists was calculated to induce some, but not too much, imperial action. In the case of Augustine’s argument to the imperial court reflected in the *contra Cresconium*, Augustine desired the imperial authorities to continue their policy of actively repressing the Donatists, which had begun in February 405, but without leaving hostages to fortune if imperial ecclesiastical policy was suddenly to shift. In the case of the letter to Boniface, Augustine needed Boniface’s ongoing support against the Donatists in Numidia. In both instances, as we shall see, Augustine pulled back from fully exploiting the evidence at his disposal.

Finally, this chapter argues that Augustine’s use of the evidence for the ‘Arian’ appeal to the Donatists in the *contra Cresconium* and *Ep.* 185 was narrowed by his concerns for the

practical and juridical exigencies of bringing the Donatists back into communion with the Catholic Church with minimal procedural encumbrances.

The three main pieces of evidence addressed in this chapter are Augustine's *Ep.* 44, his *contra Cresconium*, and his *Ep.* 185. Other pieces of evidence brought into play include Augustine's *De Haeresibus* 69, the *contra Gaudentium*, and the reference to Donatus in Jerome's *De viris illustribus* 93.

3.1 Implications Arising from the Evidence for the ‘Arian’ Appeal to the Donatists

The evidence investigated in this chapter is important for discerning Augustine’s own polemical use of this ‘Arian’ appeal to the Donatists. Further, it should be noted that the evidence examined here also has certain significant further implications for studies about the fate of Donatism after Augustine. Indeed, one of the perennial complaints in Donatist studies is that not enough is known about the fate of the Donatists under the ‘Arian’ Vandals.²⁹⁶ While the evidence for the future of the Donatists after 429 is scarce, the complaint is understandable because there are a number of intriguing clues about possible Donatist alliances with the Vandals in the period 429—534. Not least, we have the evidence from Victor’s *History* for a *transuersor ex Donatianorum heresi*, a man named Nicasius,²⁹⁷ who died in the same manner as and a short time after the

²⁹⁶ See, for example, Tilley, ‘Redefining Donatism’, 24—5.

²⁹⁷ *Tenuit sceleratissimus Huniricus dominationem regni annis septem, mensibus decem, meritorum suorum mortem consummans. Nam putrefactus et ebuliens uermibus non corpus, sed partes corporis eius uidentur esse sepultae. Sed et ille legis datae transuersor ex Donatianorum heresi ad eos ueniens quondam Nicasius in breui simili morte periit.* Text of Victor cited throughout from Victoris Episcopi Vitensis *Historia persecutionis Africanae provinciae*, ed. Michael Petschenig, CSEL 7 (Vienna: C. Gerold, 1881). On the word *transuersor*, see Lancel’s claim that ‘*transuersor* est un hapax’: Victor de Vita, *Histoire de la persécution vandale en Afrique*, ed and tr. Serge Lancel, Collection des Universités de France (Paris: Belles Lettres, 2002), 211, note 551. He adds that ‘Nicasius n’est pas un nom totalement inconnu dans les annales de l’Eglise d’Afrique’, while John Moorhead claims that ‘Nicasius is otherwise unknown’ (Victor of Vita, *History of the Vandal Persecution*, tr. John Moorhead, Translated Texts for Historians 10 (Liverpool: Liverpool University Press, 1992), 93, note 36). Conjectures such as ‘*ucasius*’ and ‘*ut Arius*’ have been proposed (Victor, *Histoire*, ed. Lancel, 211, note 551), but the name itself is not particularly uncommon: the online *Lexicon of Greek Personal Names* (<http://www.lgpn.ox.ac.uk/index.html>) lists sixteen instances of Nikasius and one of Nikasia.

persecuting Vandal king, Huneric, in 484.²⁹⁸ We also have the Vandal anti-Catholic legislation of 484 that was largely a ‘pastiche’²⁹⁹ of the Catholic anti-Donatist legislation of 411. Moreover, the Vandal anti-Catholic legislation of 484 specifically punished the *circumcelliones*.³⁰⁰ Other pieces of evidence for the Donatists in the Vandal period and beyond survive, such as the reference to the Vandal king Geiseric as ‘Antichristus’ in the Donatist *Liber genealogus*,³⁰¹ the references to

²⁹⁸ For a fuller discussion of the ‘death by worms’ topos and its reception history, see Roland Steinacher, ‘Von Würmern bei lebendigem Leib zerfressen... und die Läuse suchte Phtheiriasis. Ein antikes Strafmotiv und seine Rezeptionsgeschichte’, *Tyche. Beiträge zur Alten Geschichte, Papyrologie und Epigraphik* 18 (2003): 145–66. In his introduction to Victor’s *History*, John Moorhead argues that ‘the last chapter in the text which has been transmitted to us, which mentions the death of Huneric in December 484, is almost certainly a later addition to the text, for 3.70 can be seen as the conclusion of a rhetorical passage which begins at 3.64, and the effect of 3.71 is sheer bathos’ (Victor, *History*, tr. Moorhead, xvi). For a similar position, see Christian Courtois, *Victor de Vita et son œuvre, Étude Critique* (Algiers: Imprimerie officielle, 1954), 16. See also A. Roncoroni, ‘Sulla morte di re Unerico’, in Bruno Luiselli and Manlio Simonetti (eds), *Romanobarbarica*, vol. 2 (Rome: Herder, 1977), 247–57. Cf. Lancel’s judgement: ‘Ce dernier paragraphe du livre III de l’*Historia* fait assurément problème. Bien qu’il figure dans tous les témoins, Halm et Petschenig l’ont imprimé entre crochets droits. Certes, venant après la longue conclusion, très élaborée, des § 64–70, on peut le tenir pour une chute un peu plate. Pour ce qui est de la forme, on observera cependant que les trois phrases qui le composent se terminent (*mortem consumans / esse sepultae / morte periit*) par une clause rythmique du *cursus planus* type γ. D’autre part, comme il l’avait fait à la fin du livre I pour Geiseric (cf. 1, 51, *in fine*) il n’est pas inattendu que Victor, à la fin du livre III, note la durée du règne de son successeur et dise un mot de sa mort le 22 décembre 484, en soulignant qu’elle fut celle des persécuteurs, au moyen de laquelle la justice divine venge les persécutés’ (Victor, *Histoire*, ed. Lancel), 212, note 549.

²⁹⁹ Eric Fournier, ‘Victor of Vita and the Conference of 484: A Pastiche of 411?’, *Studia Patristica* LXII (2013): 395–408.

³⁰⁰ Victor, *History*, 3.10.

³⁰¹ The phrase is ‘*numerus nominis eius DCLXVI, id est Antichristus*’. See *Liber genealogus*, 616, ed. T. Mommsen, 194–5. For further discussion of this, see also Eric Fournier, ‘The Vandal Conquest of North Africa: The Origins of a Historiographical Persona’, *JEH* 68.4 (2017): 687–718; see also Stanislaw Adamiak, ‘When did Donatist Christianity End?’, in *Uniquely African Controversy*, ed. Dupont *et al.*, 211–36, esp. 214 and notes 10–12.

Donatists and rebaptism in North Africa in Pope Leo's letters,³⁰² and the last solid references to Donatists in the letters of Gregory the Great concerning Donatism and Numidian ecclesiastical affairs from the 590s.³⁰³ The recent work of Lesley Dossey has demonstrated the survival of important themes from the Donatists' distinctive theology, such as the theme of purity, in important documents from the Vandal period.³⁰⁴

However, this chapter is not an attempt to solve the problem of Donatist survival after Augustine's death and the Vandal invasion, nor is it an effort to argue for or against Donatist alliances with the Vandals. Rather, it has a more modest objective. In particular, it follows John Moorhead's observation that 'the intuition that events which occurred during the Vandal domination of North Africa need to be understood in the light of preceding African history,

³⁰² Leo, *Ep.* 12.6 'Donatus of Salacia, who, as we learn, has been converted from the Novatians with his people, we wish to preside over the Lord's flock, on condition that he remembers he must send a certificate of his faith to us, in which he not only condemns the error of the Novatian dogma, but also unreservedly confesses the catholic truth. Maximus, also, although he was culpably ordained when a layman, yet if he is now no longer a Donatist, and has abjured the spirit of schismatic depravity, we do not depose from his episcopal dignity, which he has obtained irregularly, on condition that he declare himself a catholic by drawing up a certificate for us' (tr. Charles Lett Feltoe, NPNF, second series 12, 14—15) Cf. letters of Leo on rebaptism: *Ep.* 159.7—8; *Ep.* 167.3.

³⁰³ Gregory, *Epp.* 2.39, 3.47—8, 4.35, 6.36, 8.14, 12.3, 12.8—9, I:125—7, I:191—4, I:255—6, I:410—11, 2:532—3, 2:979—82. For discussions of these references in Gregory's letters, see Frend, *Donatist Church*, 309—12; R.A. Markus, 'Donatism: The Last Phase', in C.W. Dugmore and C. Duggan (eds), *Papers Read at the First Winter and Summer Meetings of the Ecclesiastical History Society*, Studies in Church History 1 (London: Nelson, 1964), 118—26, and Markus, 'Country Bishops in Byzantine Africa', in D. Baker (ed.), *The Church in Town and Countryside*, Studies in Church History 16 (Oxford: Blackwell for the Ecclesiastical History Society, 1979), 1—15. For a recent discussion of this period, see Stanislaw Adamiak, 'When did Donatist Christianity End?'

³⁰⁴ Especially Leslie Dossey, *Peasant and Empire*, especially 162—172, and Dossey, 'The Last Days of Vandal Africa: An Arian Commentary on Job and its Historical Context', *JTS* 54 (2003): 60—138. In both works, Dossey's treatment of the survival of thematic elements of Donatist theology in Vandal North African texts is especially thought provoking. For excellent recent work on this period, see generally Jonathan Conant, *Staying Roman: Conquest and Identity in Africa and the Mediterranean, 439—700* (Cambridge: Cambridge University Press, 2012). See also R.W. Mathison, 'Barbarian Bishops and the Churches "in Barbaricis Gentibus" during Late Antiquity', *Speculum* 72.3 (1997): 664—97.

particularly religious history, is entirely sound.’³⁰⁵ This chapter is about one particular aspect of the preceding African religious history: the evidence for the Donatists’ Trinitarian theology in the fourth and early fifth centuries. If the Donatists had a certain degree of flexibility in their Trinitarian theology it would make a Donatist alliance with the Vandals more plausible, and the converse is also true: a rigid Trinitarian theology would make such an alliance with the Vandals less plausible. Almost everything that is known at present about the Donatists’ Trinitarian theology comes from Augustine, but to date Augustine’s allegations about the Donatists’ Trinitarian theology have been given decidedly little attention. Moreover, when Augustine’s allegations have been examined, they are often read in isolation from Augustine’s broader juridical strategy of labeling the Donatists as political opportunists.³⁰⁶ This is an effort to place Augustine’s allegations about Donatist Trinitarian theology into proper context in order for further work on the possibility of the Donatists’ alliances with the Vandals to take place on a firmer evidential footing.

3.2 Augustine’s Discovery of Evidence for an ‘Arian’ Appeal to Donatus

As discussed in chapter one, the eastern/anti-Athanasian bishops at Serdica wrote a letter to Donatus of Carthage *inter alios* encouraging him to make common cause with the ‘Arian’ parties in the East. Chapter one showed how that letter spurred the imperial repression of Constans. In this chapter, we will consider how that appeal was used by Augustine in two separate instances to justify the imperial repression of the Donatist Church. It is also shown that Augustine’s use of the evidence was calculated to both induce imperial action and ensure that such action did not repeat the mistakes of the prior Macarian persecution of 347.

³⁰⁵ See Moorhead’s introduction to Victor, *History*, xiii. However, see also Moorhead’s helpful cautions (Victor, *History*, xii—xiii) against reading too much into evidence from polemical statements about barbarian invaders being welcomed by local Christians, such as those in Orosius (*Historiae adversus paganos* 7.41.7), Possidius (*Vita Aug.* 23), and Salvian (*de gubernatione Dei* 7.16.71).

³⁰⁶ For example, see Frend’s treatment of this evidence for the Donatists’ Trinitarian theology in Frend, *Donatist Church*, 120.

In the late 390s, Augustine was shown a copy of a letter from the eastern/anti-Athanasian bishops written to Donatus. Augustine reported the letter to be the records of an ‘Arian’ council at Serdica. We know of this discovery from Augustine’s *Ep.* 44. Writing to Eleusius, Glorius, and ‘the Two Felixes’ in 398, Augustine reports that he was engaged in a debate with the Donatist, Fortunius,³⁰⁷ in Tubursi. According to Augustine, he confronted Fortunius with Donatist isolation from the churches throughout the world as follows:

I asked how these people [the Donatists] had justly separated themselves from the innocence of other Christians who preserve throughout the world the order of succession from the apostles and are established in the most ancient churches, though they were utterly ignorant about who were traditors in Africa. For they certainly could only be in communion with those who they heard held the chairs of bishops.³⁰⁸

According to Augustine, Fortunius ‘answered that the churches of the regions across the sea long remained innocent until they consented to the shedding of the blood of those who, he said, suffered the persecution of Macarius’.³⁰⁹ Augustine goes on:

There I could have said that the innocence of the churches across the sea could not have been destroyed even by the hatred of the time of Macarius, since it could in no way be proved that he did what he did under their instigation. But as a

³⁰⁷ *PCBE* 1, *Afrique*, 500—3 (‘FORTVNIVS 2’).

³⁰⁸ *Ep.* 44.3.5 (tr. Teske, *Letters* 1 — 99, 175); ... *quaerebam quomodo se isti iuste separassent ab innocentia caeterorum Christianorum, qui per orbem terrarum successionis ordinem custodientes, in antiquissimis Ecclesiis constituti, penitus ignorarent qui fuerint in Africa traditores; qui certe non possent communicare, nisi eis quos sedere in sedibus episcopalibus audiebant.*

³⁰⁹ *Ep.* 44.3.5 (tr. Teske, *Letters* 1 — 99, 175—6): *Respondit, tamdiu transmarinarum partium Ecclesias mansisse innocentes, donec consensissent in eorum sanguinem, quos Macarianam persecutionem pertulisse dicebat.*

shortcut I preferred to ask whether, if the overseas churches lost their innocence by the savagery of Macarius from the time when they were said to have consented to it, it is proven that the Donatists remained in unity with the Eastern churches and the other parts of the world at least up to those times'.³¹⁰

It was at this point that a notable incident occurred. Fortunius confronted him with the records of a 'council' that had allegedly supported the Donatists in North Africa. Augustine relates that in response to his challenge to show communion with the rest of the world, Fortunius:

brought forth a certain volume in which he wanted to show that the Council of Sardica had issued a letter to the African bishops who were in the communion of Donatus. When it was read, we heard the name of Donatus among the other bishops to whom they had written. And so we began to ask that we be informed whether this was the Donatus from whose sect these people take their name, for it is possible that they had written to a Donatus who was a bishop of another sect, especially since in those names there was not even a mention made of Africa. How, therefore, could he prove that we should understand by that name 'Donatus' the bishop of the sect of Donatus, since he could not even prove whether that letter was sent to bishops of the African churches in particular. For, though the name 'Donatus' is usually African, it would not be impossible that either someone from those regions have an African name or that some African be made bishop in

³¹⁰ *Ep. 44.3.5* (tr. Teske, *Letters 1 — 99*, 176); *Ubi ego possem quidem dicere, nec invidia Macariani temporis innocentiam transmarinarum Ecclesiarum contaminari potuisse; quandoquidem nullo modo probaretur illis auctoribus fecisse etiam quae fecerat. Sed de compendio quaerere malui, si Macarii saevitia, ex quo in eam consensisse dicebantur transmarinae Ecclesiae, suam innocentiam perdiderunt, utrum saltem probaretur usque ad illa tempora Donatistas cum orientalibus Ecclesiis ceterisque orbis partibus in unitate mansisse.*

those regions. After all, we did not find in it either a date or the consul so that something clear might emerge from a consideration of its date.³¹¹

Augustine goes on to relate what he surmised about the records based on a prior conversation with Alypius. He says, ‘We had certainly heard that, after they had split from the Catholic communion, the Arians at some time or other tried to make the Donatists their allies in Africa: my brother, Alypius, whispered this idea into my ear (*ad aurem mihi hoc ipsum frater Alypius suggessit*).’³¹²

True to legal form, Augustine was exceptionally careful with this evidence produced by Fortunius and asked to see the records relied on by Fortunius and,

having accepted that volume, I considered the statutes of that council and read that the Council of Sardica condemned Athanasius, the Catholic bishop of Alexandria, whose conflict against the Arians in highly passionate debates is well known, and Julius, the bishop of the Roman church, who was just as Catholic.

Hence, it was clear to us that it was a council of Arians, whom these Catholic

³¹¹ *Ep. 44.3.6* (tr. Teske, *Letters 1 — 99*, 176); ... *protulit quoddam volumen, ubi volebat ostendere Sardicense concilium ad episcopos Afros, qui erant communionis Donati, dedisse litteras. Quod cum legeretur, audivimus Donati nomen inter ceteros episcopos, quibus illi scripserant. Itaque flagitare coepimus ut diceretur, utrum ipse esset Donatus de cuius parte isti cognominantur: fieri enim potuisse, ut alicui Donato alterius haeresis episcopo scripserint, cum maxime in illis nominibus nec Africae mentio facta fuerit. Quomodo ergo posset probare Donatum partis Donati episcopum nomine illo accipiendum esse quando ne id quidem probare posset, utrum ad Africanarum specialiter Ecclesiarum episcopos illae litterae missae fuerint. Quanquam enim Donati nomen Afrum esse soleat, non tamen repugnaret a vero, ut vel partium illarum aliquis vocaretur nomine Afro, vel aliquis Afer in illis partibus constitueretur episcopus. Neque enim in eis vel diem vel consulem invenimus, ut saltem consideratis temporibus certi aliquid eluceret.*

³¹² *Ep. 44.3.6* (tr. Teske, *Letters 1 — 99*, 176); *Sane quoniam nescio quando audieramus Arianos, cum a communione catholica discrepassent, Donatistas in Africa sibi sociare tentasse: ad aurem mihi hoc ipsum frater Alypius suggessit.* Although the letter does not mention Goths, the relevance of this letter comes from the fact that Augustine is describing an attempted alliance between the Donatists and ‘Arians’ in North Africa.

bishops most strongly opposed. And so, we wanted to receive and to take with us the volume for a more careful examination of the times. But Fortunius refused to hand it over, saying that we have it there when we might want to consider something in it. I also asked that he would permit me to mark it by my handwriting, for I was afraid, I admit, that another volume might perhaps be produced in its place when I had to ask for it because the situation demanded, but he refused that too.³¹³

Augustine's concern, 'that another volume might perhaps be produced in its place when I had to ask for it because the situation demanded' is one interesting window into Augustine's awareness of the legal significance of these documents for his anti-Donatist polemic. We learn nothing further about this from *Ep.* 44. The circumstance that makes this incident pertinent for our purposes is that Augustine would go on to use this evidence against the Donatists. The first use Augustine made of this evidence came shortly thereafter when Augustine wrote his *c. Cresconium*, and it is to that work that we now turn our attention.

³¹³ *Ep.* 44.3.6 (tr. Teske, *Letters 1 — 99*, 176); *Tunc accepto ipso volumine, eiusdem concilii statuta considerans, legi Athanasium episcopum Alexandrinum catholicum, cuius maxime adversus Arianos acerrimarum disputationum conflictus eminuit, et Iulium Ecclesiae Romanae episcopum, nihilominus catholicum, illo concilio Sardicensi fuisse improbatos. Unde apud nos constitit Arianorum fuisse concilium, quibus isti episcopi catholici vehementissime resistebant. Itaque ad diligentiores etiam temporum discussionem voluimus ipsum volumen accipere atque auferre nobiscum. Qui noluit dare, dicens, ibi nos habere illud, quando aliquid in eo considerare vellemus. Rogavi etiam ut manu mea notari permetteret, fateor, timens ne mihi forte causa exigente, cum petendum esset, pro illo aliud proferretur; neque hoc voluit.*

3.3 Augustine's Use of the 'Arian' Appeal to the Donatists in the *contra Cresconium*

Dating and Purpose

This polemical work of Augustine's was written in response to a treatise written by the Donatist grammarian Cresconius³¹⁴ that was circulating in North Africa.³¹⁵ Augustine wrote the *contra Cresconium* after the imperial legislation of February 405³¹⁶ was in place, probably at the end of 405, and published it shortly thereafter, perhaps in early 406. Augustine's own description of his purpose in writing the *contra Cresconium* is set out in the second book of his *Retractationes*:

When Cresconius, a certain Donatist grammarian, saw the letter of mine in which I refuted the first sections of the letter of Petilian that had come into my hands at the time, he thought that he ought to respond to me, and he wrote to me. I responded to his work with four books in such a way that in fact I completed in three everything that the response required. When, however, given the situation with the Maximianists, whom they [i.e., the Donatists] condemned as schismatics, and the fact that they took some of them back in their ecclesiastical positions and did not repeat the baptism that was performed by them outside their own communion, I saw that a response could be made to everything that he wrote, and I also added a fourth book in which I exposed this very matter as well as I could,

³¹⁴ *PCBE* 1, *Afrique*, 230—8 ('CRESCONIVS 4').

³¹⁵ As A.-C. De Veer notes, commenting on the letter from Cresconius, 'Tout en l'adressant nommément à Augustin, Cresconius n'avait pas acheminé sa lettre par les voies ordinaires vers son destinataire. Celui-ci ne la reçut que bien plus tard et par pur hasard, semble-t-il. Ce qui donne à penser que Cresconius ne cherchait pas à convertir Augustine qu'il savait irréductible, mais à venger l'honneur de Petilianus aux yeux de ses coreligionnaires. On sait d'ailleurs que les donatistes mettaient un soin jaloux à cacher à leurs adversaires les écrits de leurs écrivains. C'est ainsi que le pamphlet du grammairien a pu circuler chez les donatistes de communauté en communauté pendant plusieurs années avant de tomber entre les mains de saint Augustin' (G. Finaert and A.-C. De Veer (eds), *Traites anti-Donatistes IV: Réponse à Cresconius, grammarian et donatiste; Livre sur l'unique baptême*, Bibliothèque Augustinienne 31 (Paris: Desclée de Brouwer, 1968). 10).

³¹⁶ *CTh.* 16.5.38.

carefully and with evidence. But when I wrote these four books, the emperor Honorius had already laid down laws against the Donatists. This work began in this way: ‘When, unbeknownst to me, my writings were able to make their way to you, Cresconius.’³¹⁷

Chapter five of this thesis will take up at greater length Augustine’s arguments about schism and heresy set out in the *contra Cresconium* (especially 2.7), arguments of Augustine’s that are clearly paralleled in the language of the imperial legislation of 405 as we will see. But, for now, it is important to note that Augustine’s arguments in the *contra Cresconium* were clearly intended to influence the imperial court in Ravenna, and most especially the general Stilicho.³¹⁸

³¹⁷ *Retractationes*, 2.26.53 (tr. Boniface Ramsey, *Revisions (Retractationes)*, including an appendix with the *Indiculus of Possidius*, The Works of Saint Augustine, A New Translation for the 21st Century, ed. John E. Rotelle, I/2 (Hyde Park, NY: New City Press, 2010), 133—4); *Grammaticus etiam quidam Donatista Cresconius, cum invenisset epistolam meam, qua primas partes quae in manus nostras tunc venerant epistolae Petiliani redargui, putavit mihi esse respondendum et hoc ipsum scripsit ad me. Cui operi eius libris quattuor respondi, ita sane ut tribus peragerem quod universa responsio flagitabat. Sed cum viderem de sola Maximianensium causa, quos suos schismaticos damnaverunt, et eorum aliquos rursus in suis honoribus receperunt, baptismumque ab eis extra suam communionem datum non repetiverunt, responderi posse ad cuncta quae scripsit, etiam quartum librum addidi, in quo id ipsum, quantum potui, diligenter atque evidenter ostendi. Hos autem quattuor libros quando scripsi, iam contra Donatistas leges dederat Honorius imperator. Hoc opus sic incipit: Quando ad te, Cresconi, mea scripta pervenire possent ignorans* (Sancti Aureli Augustini *Retractationum libri duo*, ed. Pius Knöll, CSEL 36 (Vienna: F. Tempsky, 1902)). On the use of this evidence from Augustine’s *Retractationes* for the dating of the work, see De Veer, ‘Selon toutes les apparences, c’est dans les premiers mois de 405 que la lettre de Cresconius parvint à Hippone. Augustin en entreprit la refutation sur-le-champ, car il n’avait pas l’habitude de trainer en ces sortes d’affaires. Il nous apprend plus tard qu’il écrivit sa réponse à Cresconius après que l’empereur Honorius eût promulgué les lois contre les donatistes. Or ces lois ont été publiées le 12 février 405’ (Finaert and De Veer (eds), *Traites anti-Donatistes IV*, 10). See also Sieben’s judgement in the recent German critical edition of the *Contra Cresconium*, ‘Es scheint vernünftig, mit A.C. de Veer anzunehmen, daß Augustinus seine Schrift vielleicht noch 405 fertiggestellt, sie jedoch nicht vor 406 veröffentlicht hat’ (Hermann Joseph Sieben (ed. and tr.), *Ad Cresconium – An Cresconius*, Augustinus Opera – Werke 30 (Paderborn: Ferdinand Schöningh, 2014).

³¹⁸ Just as it is reasonable to assume that Cresconius’ treatise was not penned primarily for Augustine’s benefit, it is reasonable to assume that Augustine had another audience than Cresconius in mind for this work.

Allegations of 'Arianism' in the contra Cresconium

Augustine's allegations about Donatists and the Arians in the *contra Cresconium* begin with his response to Cresconius' challenge over the Donatists' name. Apparently, Cresconius preferred the proper Latin form of 'Donatian' rather than 'Donatist'. Augustine humorously retorts that Cresconius' followers are too worried about going by the name of their leader, like the followers of Arius and Novatus.³¹⁹ Interestingly, it is a point that Augustine later conceded to the Donatists in his *De Haeresibus* when he categorized them as Donatists or Donatians.³²⁰ But, beyond this sort of playful rejoinder, Augustine makes certain other allegations which carried more weight.

Specifically, in the third book of the *contra Cresconium*, Augustine points out that Cresconius was arguing that his party had received the support of eastern churches. However, Augustine responds to Cresconius by pointing out that this was actually an 'Arian' council that was opposed to Athanasius.

³¹⁹ c. Cresc. 2.1.2. *Audi ergo, Cresconi, dum breviter et hoc demonstrabo, nihil te dixisse per totam epistolam tuam quo refelleres meam, nisi forte quod me nomina derivare vel declinare docuisti, ut a Donato Donatianos potius quam Donatistas dicerem, quam tamen graecam saltem declinationem esse concedis, videlicet quod ita Donatistae a Donato, ut Evangelistae ab Evangelio nominentur; quo te delectari dicis, ut vestris Evangelium praedicantibus, a simili mutuata sit vocabuli declinatio. Vide ergo ne forte ipsi priores hoc voluerint appellari, quia Donatum habent pro Evangelio: nam sic isti a Donati, quomodo sancti omnes nolunt ab Evangelii societate discedere; et ideo delectantur vocari Donatistae, sicut evangelistae: tuque potius eis facis iniuriam, cum scribis, in latino sermone, nonnisi latinam regulam probans: Donatianos a Donato, sicut ab Ario et Novato Arianos et Novatianos, melius vocari.*

³²⁰ *De Haeresibus* 69.1. *Donatiani vel Donatistae sunt qui primum propter ordinatum contra suam voluntatem Caecilianum Ecclesiae Carthaginensis episcopum schisma fecerunt, obicientes ei crimina non probata, et maxime quod a traditoribus divinarum Scripturarum fuerit ordinatus. Sed post causam cum eo dictam atque finitam falsitatis rei deprehensi, pertinaci dissensione firmata, in haeresim schisma verterunt, tamquam Ecclesia Christi propter crimina Caeciliani, seu vera, seu, quod magis apparuit iudicibus, falsa, de toto terrarum orbe perierit, ubi futura promissa est, atque in Africana Donati parte remanserit, in aliis terrarum partibus quasi contagione communionis exstincta. Audent etiam rebaptizare Catholicos, ubi se amplius haereticos esse firmarunt, cum Ecclesiae catholicae universae placuerit nec in ipsis haereticis baptisma commune rescindere.*

But you say that ‘this crime did not escape the Easterners’, who, you concede, are now on our side. And to prove this you insert the beginning of the letter of the Council of Serdica, where the name of Donatus – your bishop of Carthage – is found written. You think and affirm that this was done for this reason – because the Easterners, who sent this document from their Council, disapproved of the crime of the *traditores* and withdrew from communion with them and therefore were in communion with your Donatus. Learn, therefore, what you don’t know: the Council of Serdica was a Council of Arians – which has long been known – and we have at hand an act, directed particularly against Athanasius, the Catholic bishop of Alexandria, who beyond all others bitterly censured and refuted their error, which arose in that same city. It is therefore no wonder if those heretics, whom the Catholic Church throughout the whole world condemned, attempted to take Donatus to themselves as one of their own – though it’s without the names of their cities that we have the bishops to whom that letter was sent. Either, therefore, there was some Donatus who was not a bishop in Africa, to whose name ‘Carthage’ was attached by your people, or – as I said – an Eastern heresy attempted to join to itself an African heresy. The latter is especially credible for this reason – that the Eastern Catholic Church would never write to the Bishop of Carthage while omitting the Bishop of Rome, where, at the least, *your* Bishop of Rome ought to have been written to – the one you are wont to send to Rome from Africa for the few people you have there. But thanks be to God that that conspiracy of Eastern heretics with African heretics did not succeed in prevailing – if the attempt was even begun. You put in your letter that Arians are now despised among the heretics by both us and you, so there is no need for me to contend with you on this question as well. Now as to the question you set yourself as if it had been thrown up by me, ‘If this is so, how were the Easterners separated from communion with your people?’, to which you replied that in the matter of receiving our people again, they were not able to maintain their constancy over the condemned cause – is it to be wondered at that your bishops

tell you with impunity whatever they please about lands so far away? If it were indeed so, what did so many peoples do who, though they were ignorant of these affairs, are yet marked down by you as having to be rebaptized? Or is it credible that congregations were even able to be ignorant of these things, when you, who are considerably more pains-taking, don't ask what your Africans did with the Maximianists in Africa, unless you want to reply to my letter?³²¹

Of course, the record of the council that Augustine refers to here is probably the letter sent to Donatus by the eastern bishops at the Council of Serdica, the same letter that was shown Augustine by Fortunius in 398 (*Ep.* 44). Augustine's response to Cresconius points out the possibility that the letter was sent to another Donatus, perhaps someone other than the Donatists'

³²¹ *c. Cresc. 3.34.38* (my translation); *Sed 'Orientales', quos modo nostros esse concedis, 'non latuisse hoc facinus' dicis. Atque ut hoc probes, inseris 'principium epistolae concilii Serdicensis, ubi Donati Carthaginis episcopi vestri nomen invenitur adscriptum. Quod ideo factum putas et affirmas, quod videlicet Orientalibus, qui de concilio suo haec scripta miserunt, facinus displicuerit traditorum, et ab eorum se communione retraxerant, et propterea Donato vestro communicabant'. Disce ergo quod nescis: Serdicense concilium Arianorum fuit, quod notum iamdiu est, et habemus in manibus, contractum maxime contra Athanasium episcopum Alexandrinum catholicum, qui eorum errorem ex ipsa civitate ortum, prae caeteris acriter arguebat et refellebat. Non igitur mirum si illi haeretici Donatum sibi ut suum asciscere tentaverunt, quos per totum orbem catholica damnabat Ecclesia. Quamquam nos sine civitatum nominibus episcopos ad quos hae litterae datae sunt habeamus. Aut ergo aliquis Donatus fuit non in Africa episcopus, cui nomini Carthago a vestris est addita; aut, ut dixi: Africanam haeresim Orientalis haeresis sibi tentavit adiungere. Quod hinc maxime credibile est, quod ad Carthaginis episcopum Romano praetermisso, numquam Orientalis catholica scriberet: ubi saltem vester scribi debuit, quem soletis Romam paucis vestris mittere ex Africa. Sed Deo gratias, quod nec valuit, si tamen coepta est, illa conspiratio haereticorum Orientalium cum Afris haeticis praevalere. Tu Arianos iam inter haeticos et nobis et vobis detestandos in tua epistola posuisti; unde mihi tecum nulla necessitas est etiam de hac quaestione conflagere. Nam quod tibi proposuisti quaestionem tamquam a nobis obiectam: 'Si haec ita sunt, a communione vestrorum quemadmodum Orientales postea disgregati sunt?', et respondisti 'quod in recipiendis iterum nostris damnatae causae non potuerint servare constantiam'; numquid mirandum est de tam longinquis terris episcopos tuos impune tibi narrare quod volunt? Quod si omnino ita esset, tot populi quid fecerunt, qui cum ista nescirent, tamen a vobis rebaptizandi censentur? Annon est credibile quod et haec populi ignorare potuerint, cum tu harum rerum aliquantum studiosior, quid cum Maximianensibus egerint vestri Afri in Africa, nisi litteris meis velles respondere, non quaereres?*

leader, Donatus of Carthage. It is an uncharacteristically charitable point in this polemical treatise, and one that bears noting. Augustine is probably giving Cresconius an opportunity to back away from the suggestion, but at the same time exposing the allegation clearly for the imperial court in Ravenna. Here, Augustine has his cake and eats it too. He paints Cresconius into a corner, but it is likely that Augustine did not believe that Cresconius would own up to a Donatist alliance with the Arians.

Later, in book IV, Augustine repeats the same allegations, but likewise gives Cresconius and the Donatists a chance to distance themselves from the letter.

You say that the crimes of the *traditores* were known to the Easterners, when the schism of the Maximianists, committed in the capital of Africa, was unknown to you before you read my letter and, thoroughly agitated, consulted your bishops. And when you did consult them, you were not at all able to hear the truth from them. To be sure, if you defend them you concede – to avoid calling them liars – that they are ignorant, and yet you don't allow us or so many and such great peoples of East and West to be ignorant of the case of Caecilian, though they are ignorant of the case of Praetextatus and Felicianus,³²² whom 310 bishops – that is,

³²² Praetextatus of Assuras and Felicianus of Musti were prominent Maximianists: *PCBE* 1, *Afrique*, 901—3 ('PRAETEXTATVS 1') and 400—2 ('FELICIANVS 1').

all or nearly all the bishops of the party of Donatus – condemned, Africans condemning Africans in Africa, Africans receiving Africans in Africa.³²³

In both these instances, Augustine's response to Cresconius is designed to paint Cresconius and the Donatists as potential auxiliaries of the 'Orientales', while at the same time giving Cresconius and the Donatists an opportunity to back away from these allegations of an alliance with the East. Indeed, Augustine tells Cresconius he knows that Cresconius ranks the Arian bishops present at Serdica 'among the heretics' (c. *Cresc.* 4.44.52). It was a strategy of Augustine's that was calculated to get the imperial court to take notice of the possible threat that the Donatists continued to pose. The Donatists had presumably made one alliance with the East in the past and could do so again. In the case of the Gildo 'revolt', something many Donatists

³²³ c. *Cresc.* 4.43.51 (my translation); *Dicis Orientalibus nota fuisse crimina traditorum, quando tibi Afro Maximianensium schisma in Africae capite commissum, antequam meas litteras legens valde permotus consuleres episcopos vestros, incognitum fuit et, cum consulisses, verum ab eis audire minime potuisti. Quos certe si defendis, ne dicas mentitos, concedis ignaros, et tamen nec nos nec orientis et occidentis tot tantosque populos saltem nescire permittis causam Caeciliani, cum isti nesciant Praetextati et Feliciani, quos trecenti et decem, hoc est aut omnes aut prope omnes episcopi partis Donati, Afri Afros in Africa damnaverunt, Afri Afros in Africa susceperunt.* See also, c. *Cresc.* 4.44.52. *Inseris principium Serdicensis concilii, unde probare conaris, quod orientales episcopi cognito crimine traditorum parti Donati communicaverint, hoc uno magno scilicet documento, quod inter episcopos quibus scribunt Donati nomen inventum est. Nec tamen ibi aliquid legitur eos de Afris traditoribus cognovisse. Quod quidem concilium, ne te lateat, arrianorum est, quos iam tu inter alios haereticos nominasti, nec additis civitatum nominibus legi solet, quia nec ipse mos est ecclesiasticus, quando episcopi episcopis epistulam scribunt. Unde nescio quis iste Donatus miror si non in vestris litteris Carthaginiensis factus est, quamquam potuerint illi tam longinquis terris ab Africa separati eo ipso tempore quo scribere volebant requirere, quisnam episcopus esset Carthaginis, <et invenire> esse Donatum. Omitto enim dicere, quod fortasse orientales haeretici <afris> haereticis aliquo modo se sociare temptaverant. Sed tu, homo prudens, cum velles solvere quaestionem, cum tibi dici posset: si haec ita sunt, ut orientales scriberent ad Donatum vestrum, quemadmodum a communione vestrorum orientales postea digregati sunt?, respondisti et dixisti: 'Quia in recipiendis iterum vestris damnatae causae non potuerunt servare constantiam. Et scriptum est: qui iungitur fornicariae unum corpus est'. Ubi vestros nunc atrociter accusasti, si in hac causa Maximianensium non potuerunt servare constantiam execrabiliter damnando sacrilegos, honorabiliter suscipiendo damnatos. Illud enim de Orientalibus omnino non probas, hoc de vestris audis et legis et cernis et iudicas.*

supported, they had attempted to do that very thing. At the same time, Stilicho's policy towards the East was changing by the month and Augustine would not want to be seen as alleging too much, and then getting himself and the Catholic party on the wrong side of imperial policy.

Moreover, Augustine was emphatic about the need to bring the Donatists back into the Catholic fold with a minimum of protocol. Thus, he waxes poetic about the abuses of Donatists towards Catholics who convert to Donatism, but points out that the Catholics have no such requirement for Donatists. This was something that might have been jeopardized had Augustine taken his allegations about the Donatists' Trinitarian theology too far. Thus, in *Epistle* 185 to Boniface, Augustine relates the following about the Donatists' policies for converting Catholics:

Things came to such a point that not only the laity or certain clerics but even Catholic bishops were faced with a dire situation (*quodammodo proponebatur dura conditio*). For either they had to be silent about the truth or they had to endure their cruelty.³²⁴

The Council of Arles had forbidden rebaptism except in the case of those who were not baptized in the name of the Father, Son, and Holy Spirit.³²⁵ For his part, Athanasius, had required rebaptism for Arians in Alexandria.³²⁶ Thus, one reason for Augustine's reluctance to allege too much about Donatist Trinitarian theology becomes apparent: he was concerned about jeopardizing the easy standard for readmission to the Catholic communion.

From what we know from Augustine's writings, the Catholic party was eager to let the Donatists come back into the Catholic Church with a minimum of procedural encumbrance. All

³²⁴ *Ep.* 185.4.18 (tr. Roland Teske, *Letters 156 — 210*, The Works of Saint Augustine, A New Translation for the 21st Century, ed. John E. Rotelle, II/3 (Hyde Park, NY: New City Press, 2004), 189—90; *Usque adeo prorsus non solum laicis, vel quibuslibet clericis, sed ipsis quoque episcopis catholicis quodammodo proponebatur dura conditio. Aut enim tacenda erat veritas, aut eorum immanitas perferenda.*

³²⁵ Canon 9, Arles (314), in Gaudemet, *Conciles Gaulois*, 50.

³²⁶ On the invalidity of Arian baptism, Athanasius, *contra Arianos* 2.43.

of which would give Augustine pause before alleging too much against the Donatists as Trinitarian heretics.

Perhaps most importantly, Augustine was carefully reading the political situation in Italy and his ‘softly, softly’ strategy here was calculated to avoid the possibility of alleging too much that he could not then back away from.

Beginning in the early 400s, Augustine’s allegations about the Donatists’ opportunism towards ‘Arians’ started to focus much more on his professed concerns about Donatist alliances with ‘Easterners.’ This fact is a direct result of the evolving political situation both in North Africa and in Italy. Gildo’s recent attempted usurpation had included an attempt to form an alliance with the Eastern Empire. Moreover, the imperial policy in Ravenna during much of this decade was dependent on a series of shifting alliances with ‘Arian’ parties and managed by the part-Vandal, Stilicho. Accordingly, a short discussion of the political situation in Italy during these pivotal years of 405/406 is necessary to discern the extent to which Augustine was crafting his allegations about the Donatist Trinitarian theology to raise fears that the Donatists might ally with ‘Easterners’, but at the same time not alleging so much about the Donatist ‘Arianism’ or favor towards the East that he might find himself on the wrong side of the issue if/when imperial policy shifted again. The Western imperial policies towards the East and towards ‘Arians’ during this period were driven largely by the policies of the general Stilicho. A discussion of Stilicho’s policy during this period is in order to discern how Augustine’s allegations in the late 390s were designed to stoke imperial fears that the Donatists were inclined to ally with the Goths and then turned in the early 400s to alleging that the Donatists might favor the Eastern Empire and had suspect Trinitarian theology that could lead to an alliance with Eastern/‘Arian’ parties.

Stilicho’s Policies 395—408

A good treatment of Stilicho’s policies in the period 395—408 is found in Meaghan A. McEvoy’s book, *Child Emperor Rule in the Late Roman West, AD 367—455*,³²⁷ in which chapter six is dedicated to discussing the regime of Stilicho. Stilicho became regent of the Western Roman

³²⁷ Meaghan A. McEvoy, *Child Emperor Rule in the Late Roman West, AD 367—455* (Oxford, Oxford University Press, 2013).

Emperor Honorius upon the death of Honorius' father, Theodosius, in 395. His policies over the next thirteen years would be designed to secure his hold on power, and undermine the power of the Eastern Roman Empire, and especially the Eastern Roman Emperor, Honorius' brother, Arcadius.³²⁸ Along the way, as we have seen, Stilicho defeated the imperial usurper Gildo and saved the Western Roman Empire, at least if one believes Claudian's account of the events:

The kingdom of the south is restored to our empire, the sky of that other hemisphere is once more brought into subjection. East and West live in amity and concord beneath the sway of one ruler. We have joined Europe again to Africa, and unswerving singleness of purpose unites the brother emperors. The would-be third participant of empire has fallen before the prowess of Honorius the son — that one victory that failed to grace the arms of Theodosius, the father. Still is my mind troubled and admits not the universal joy for very amazement, nor can believe the fulfilment of its heartfelt prayers. Not yet had the army landed upon Africa's coasts when Gildo yielded to defeat. No difficulties delayed our victorious arms, neither length of march nor intervening ocean. One and the same word brings news of the conflict, the flight, the capture of Gildo. The news of victory outstripped the news of the war that occasioned it. What god wrought this for us? Could madness so strong, so deep-seated be overcome so soon? The enemy whom early winter brought upon us, spring destroyed.³²⁹

³²⁸ See McEvoy's judgement that, 'These years were to see many challenges to the western government take shape, in the form of latent eastern hostility and interference, provincial usurpations, and the long-running dilemma of how to deal with the Visigoths under Alaric once they arrived on western soil' (*ibid.*, 153).

³²⁹ Claudian, *de bello Gildonico*, 1—16 (tr. Platnauer, LCL 135, 99). 'When a second Rome arose and the Eastern Empire assumed the toga of the West, Egypt fell beneath that new sway. Africa remained our only hope and scarcely did she suffice to feed us, whose corn-ships none but the south wind wafted across. Her promise for the future was insecure, as, ever helpless, she demanded the loyalty of the wind and of the season. This province, too, Gildo seized towards the close of autumn' (*de Bello Gildonico*, 60—67, tr. Platnauer, LCL 135, 103).

The importance of this victory is found in the following lines of Claudian's, that 'Rome, the goddess, fearing for her city's destruction and weak with corn withheld ...'³³⁰ According to Claudian, Stilicho's victory over Gildo meant that 'East and West live in amity' and Rome's corn was no longer withheld. The following decade though would belie Claudian's claim of amity between East and West.

Stilicho also faced challenges from a rebellion of the Visigoths under Alaric in 395 and led several campaigns against them in the next few years. Intriguingly, Augustine's *Ep.* 44, alleging the possibility of a Donatist alliance with the Goths that Alypius had told about him 'in a whisper' comes from this period in 398. However, Augustine was right to be careful in his allegations about the Goths because certain of them had been in alliance with Theodosius at Frigidus³³¹ and Stilicho's campaigns against the Visigoths in the mid- to late-390s were inconclusive.³³²

What is important for our purposes is that Augustine would have known how unpredictable these alliances between Empire and Goths, and East and West, were. So, when he wrote treatises, such as the *contra Cresconium*, he made sure to give himself plenty of plausible deniability when he alleged that the Donatists were inclined to favor the Goths or ally themselves with the East.

It is the maneuvers between East and West and the place of the Goths in that during the first decade of the fifth century that offer the surest interpretive framework for Augustine's cautious allegations in the *contra Cresconium*. As already noted, this work was composed in 405/406, a pivotal year in the Donatist controversy. Moreover, it was a pivotal year in the Western Empire's relationship both with the Goths and with the Eastern Empire.

³³⁰ Claudian, *de bello Gildonico*, 17—18 (tr. Platnauer, LCL 135, 101).

³³¹ For a more detailed discussion of this, see McEvoy, *Child Emperor Rule*, 154—5.

³³² *Ibid.* Although Claudian claimed that the campaigns were called off at the order of the Eastern Emperor, Arcadius, who feared Stilicho's growing power, as McEvoy notes, 'Claudian's version is most likely far removed from the truth: more convincing are arguments that the campaign had been aborted due to ill-discipline in Stilicho's army, while the claimed demand from Arcadius for the return of the eastern troops had served as a convenient excuse' (*ibid.*, 155).

In 401, Alaric invaded Italy, and Milan was besieged in 402, and there were battles at Pollenta and Verona in the same year.³³³ Over the next two years, as McEvoy has shown, matters stabilized in the West, only to reach a crisis point again in 405/406.³³⁴ In particular, the year 405/406 marked the invasion of Italy by Radagaisus, who was then defeated at Faesulae on 8 August 406.³³⁵ However, as McEvoy has demonstrated, Stilicho pursued an alliance with Alaric at this point, making Alaric *magister militum* of eastern Illyricum, a decision which McEvoy has noted would have evoked hostility from Arcadius's government.³³⁶

At the end of 406 armies of Vandals, Alans, and Sueves crossed the Rhine and invaded Gaul, and the next several years would be marked by Stilicho's repeated attempts to restore order in the Western Empire.³³⁷ While the situation in this period of 407—408 is fascinating in its own right, the important thing for our purposes in this chapter is that Stilicho's policy *vis-à-vis* the Goths and the Eastern Empire was changing consistently, and anyone interpreting it in North Africa would be wise to avoid leaning too far in a direction from which they could not recover. Of course, Stilicho's own policy, and in particular the payments demanded by Visigothic allies, is probably the reason for his execution in 408 at the order of Honorius, demonstrating just how dangerous this situation really was.³³⁸

We see a similar pattern in Augustine's communication with another general, Boniface, in 418. In the case of Stilicho and Boniface, Augustine was communicating information to soldiers who were primarily concerned for public order. But, as the stories of both men's lives would

³³³ *Ibid.*, 170—2.

³³⁴ *Ibid.*, 172—4.

³³⁵ *Ibid.*, 174—5, following McEvoy on dating.

³³⁶ *Ibid.*, 175: 'Given the improvement of relations between the eastern and western courts in recent years, such a decision by Stilicho to invade eastern Illyricum seems surprising, for the hostility it would evoke from Arcadius' government as a result must have been entirely foreseeable.'

³³⁷ *Ibid.*, 176.

³³⁸ For an excellent discussion of Stilicho's downfall as described by Zosimus, see especially McEvoy, *Child Emperor Rule*, 180—6.

show, neither was secure in his position, and they only held those positions by virtue of the fact that they were successful in sustaining order. Augustine's insinuations about the Donatists to Stilicho and the imperial court were shaped by this realization. As we will see, the same is true of Augustine's strategy with the general Boniface in 418.³³⁹

3.4 Augustine's Use of the Donatist Appeals in *Ep.* 185 to Boniface

This is best seen in Augustine's *Ep.* 185 to Boniface from 418.³⁴⁰ In this letter, Augustine carefully stokes the general Boniface's fears that the Donatists might form alliances with certain Goths in Boniface's army,³⁴¹ but then is similarly careful to pull back from identifying all of the Donatists with the so-called 'Arians'.

In his letter, Augustine reports to Boniface the following:

In order, therefore, to inform Your Charity briefly of the difference between the error of the Arians and that of the Donatists, the Arians say that the Father and the Son and the Holy Spirit have different substances. The Donatists, however, do not say this but confess that the Trinity has one substance. And if some of the Donatists say that the Son is less than the Father, they do not deny that he is of the same substance.³⁴²

³³⁹ For an interesting analogy to these letters, see Augustine's correspondence with Macedonius, especially *Ep.* 152. See also Peter Iver Kaufman, 'Augustine, Macedonius, and the Courts', *AugStud* 34.1 (2003): 67—82.

³⁴⁰ Following Brown on dating to 418: Brown, *Augustine of Hippo*, 425.

³⁴¹ For a fuller discussion of this situation, see Frank M. Clover, 'The Pseudo-Boniface and the *Historia Augusta*', in *Bonner Historia-Augusta-Colloquium 1977/78*, ed. Andreas Alföldi, *Antiquitas*, Reihe 4.14 (Bonn: Rudolf Habelt, 1980), 73—95, reprinted in Frank M. Clover, *The Late Roman West and the Vandals* (Aldershot: Variorum, 1993), no. 9.

³⁴² *Ep.* 185.1.1 (tr. Teske, *Letters 156 — 210*, 180; *Ut ergo breviter insinuem Dilectioni tuae, inter Arianorum et Donatistarum quid intersit errorem; Ariani Patris, et Filii, et Spiritus sancti diversas substantias esse dicunt: Donatistae autem non hoc dicunt, sed unam Trinitatis substantiam confitentur. Et si aliqui ipsorum minorem Filium esse dixerunt quam Pater est; eiusdem tamen substantiae non negarunt ...*

Here we can see Augustine responding to a probable question from Boniface about the differences between the Donatists and the ‘Arians.’ At the time of this letter, Boniface³⁴³ was leading a military contingent in Numidia tasked with fighting against marauding tribes. In light of the strength of Donatism in Numidia that has been demonstrated by Frend,³⁴⁴ it is no wonder he was concerned about the Donatists making an alliance with his soldiers, many of whom would have been Goths, when he wrote to Augustine.³⁴⁵ Augustine capitalizes on that state of affairs to place before Boniface the ‘errors’ of the Donatists. Moreover, throughout the rest of the letter, Augustine goes to great lengths to set out the threat to public order posed by the Donatists. We see this, for example, in Augustine’s statements about Donatist violence later on in the same letter:

But then the Donatists became so inflamed with anger and were aroused by such goads of hatred that hardly any churches of our communion were able to be secure against their plots, acts of violence, and brazen robberies, and hardly any road was safe for those to travel who preached the Catholic peace against their madness and refuted their insanity with the plain truth.³⁴⁶

None of this is terribly surprising given that Augustine is writing to a military leader. One expects that Augustine would emphasize the threat to public order posed by the Donatists. However, what is more surprising is that Augustine pulls back from the full weight of his allegations about the Donatists being ‘Arians’ or seeking an alliance with Goths. Thus, what is

³⁴³ On his long career, *PLRE* 2, 237—40 (‘Bonifatius 3’).

³⁴⁴ Frend, *Donatist Church*, 48—59.

³⁴⁵ See also, Brown, *Augustine of Hippo*, 426

³⁴⁶ *Ep.* 185.4.18 (tr. Teske, *Letters 156 — 210*, 189); *Tum vero illi sic exarserunt, et tantis sunt odiorum stimulis incitati, ut contra eorum insidias atque violentias et apertissima latrocinia, vix ullae nostrae communionis Ecclesiae possent esse securae, vix ulla via tuta qua iter agerent quicumque adversus eorum rabiem pacem catholicam praedicarent, eorumque dementiam perspicua veritate convincerent.*

far more interesting than what Augustine specifically alleges about the Donatists to Boniface is what he also specifically qualifies about them. In particular, he quickly clarifies to Boniface that not all the Donatists are ‘Arian’ in their doctrine. Indeed, he specifies that it is only some part of the Donatists who are favorable to the Arians, while ‘very many among them’ are not so inclined. Moreover, he is clear that the Donatist leadership is not inclined in this way. We see this in Augustine’s statement to Boniface,

And if some of the Donatists say that the Son is less than the Father, they do not deny that he is of the same substance. But very many (*plurimi*) among them say that they believe about the Father and the Son and the Holy Spirit the same thing that the Catholic Church believes. Nor is this the question at issue with them, but to their misfortune they quarrel only about Church unity and, by the perversity of their error, carry on rebellious hostilities against the unity of Christ. But at times some of them, as we have heard, wanting to win the Goths to their side, when they see that they have some power, say that they believe the same thing as the Goths. But they are refuted by the authority of their predecessors, because not even Donatus himself is said to have held that belief, and it is his sect to which they boast of belonging.³⁴⁷

We have evidence from Jerome that Donatus wrote a treatise which was said to be ‘Arian’ in doctrine:

³⁴⁷ Ep. 185.1.1 (tr. Teske, *Letters 156 — 210*), 180. *Et si aliqui ipsorum minorem Filium esse dixerunt quam Pater est; eiusdem tamen substantiae non negarunt: plurimi vero in eis hoc se dicunt omnino credere de Patre et Filio et Spiritu sancto, quod catholica credit Ecclesia. Nec ipsa cum illis vertitur quaestio; sed de sola communione infeliciter litigant, et contra unitatem Christi rebelles inimicitias perversitate sui erroris exercent. Aliquando autem, sicut audivimus, nonnulli ex ipsis volentes sibi Gothos conciliare, quando eos vident aliquid posse, dicunt hoc se credere quod et illi credunt. Sed maiorum suorum auctoritate convincuntur; quia nec Donatus ipse sic credidisse asseritur, de cuius parte se esse gloriantur.*

Donatus, from whom the Donatians sprouted throughout Africa under the Emperors Constantius and Constantine, asserting that during the persecution the scriptures had been handed over by our people to the pagans, persuaded and deceived nearly the whole of Africa and especially Numidia. Many pamphlets of his relating to his heresy survive, and a book about the Holy Spirit that agrees with Arian teaching.³⁴⁸

But Augustine does not use that evidence with Boniface. It is possible that Augustine was unaware of Jerome's work at this point,³⁴⁹ but more likely that he was keen to avoid such a full-frontal attack. We do know that he had heard of Donatus' treatise, at least by the late 420s when

³⁴⁸ Jerome, *de Viris Illustribus*, 93 (Hieronymus, *liber de viris inlustribus*; Gennadius, *liber de viris inlustribus*, ed. Ernest Cushing Richardson, *Texte und Untersuchungen* 14.1 (Leipzig: J.C. Hinrichs, 1896); *Donatus, a quo Donatiani per Africam sub Constantio Constantinoque principibus pullulaverunt, asserens, a nostris Scripturas in persecutione Ethnicis traditas, totam pene Africam et maxime Numidiam, sua persuasione decepit. Exstant ejus multa ad suam haeresim pertinentia opuscula, et de Spiritu sancto liber, Ariano dogmati congruens* (my translation). In the unpublished paper titled 'The "Arianization" of the Donatist Controversy' given at the Oxford Patristics Conference in August 2015, Jesse Hoover notes also certain intriguing statements by Isidore of Seville and Epiphanius of Salamis comparing Donatists and 'Arians'. In particular, Isidore states that Donatus 'deceived nearly all Africa with his persuasiveness, asserting that the Son was less than the Father, and the Holy Spirit less than the Son' (*Etymologies* 8.51); and Epiphanius reported that 'Arius agrees with the Donatists and they with him' (*Panarion* 13.8). However, Hoover also observes that such a direct identification between Donatism and Homoian beliefs seems to have been unknown to North Africans (including Augustine, as Hoover interprets Augustine's attitude in *Ep.* 185). See 'The "Arianization" of the Donatist Communion in Late Antique Heresiology', available at <http://baylor.academia.edu/JesseHoover>.

³⁴⁹ 'There is general agreement' on the basis of references to the fourteenth year of Theodosius in *de Vir. Ill.*, Prol and 125, that 'the work should be dated somewhere between 19 January 392 and 18 January 393, probably towards the close of the span' (J.N.D. Kelly, *Jerome. His Life, Writings, and Controversies* (London: Duckworth, 1975), 174.

he composed his *De Haeresibus*.³⁵⁰ Specifically, in his *De Haeresibus*, Augustine references this same treatise by Donatus. Augustine's description of the Donatist party and of Donatus' treatise is as follows:

We understand that Donatus was the leader of this heresy. He came from Numidia and divided the Christian people against Caecilian; he ordained Majorinus bishop at Carthage after having united to himself the bishops of this faction. Another Donatus succeeded this Majorinus in this schism, and by his eloquence he strengthened this heresy so that many think that these people are called Donatists after him. There exist writings of his which make it clear that he did not hold the Catholic position on the Trinity, but thought that, though they are of the same substance, the Son was inferior to the Father and the Holy Spirit inferior to the Son. But the vast majority of the Donatists did not take note of this erroneous view which he held concerning the Trinity, nor is it easy to find anyone among them who knows that he held this position.³⁵¹

³⁵⁰ For dating of the *De Haeresibus* to 428/429, see Teske's introduction to *Arianism and Other Heresies*, tr. Roland Teske, The Works of Saint Augustine, A New Translation for the 21st Century, ed. John E. Rotelle, I/18 (Hyde Park, NY: New City Press, 1995), 15: 'Saint Augustine wrote his work, *Heresies*, during the years 428 and 429, while he was working on the *Revisions* and the *Unfinished Work in Answer to Julian*. Like both of these works, *Heresies* remained incomplete due to Augustine's death in 430, for the original plan of the work was meant to include, besides the list of heresies, a refutation of the individual heresies and a discussion of the nature of heresy.'

³⁵¹ *De Haeresibus*, 69.2 (tr. Teske, *Arianism and Other Heresies*, 50—1); *Huius haeresis principem accepimus fuisse Donatum, qui de Numidia veniens, et contra Caecilianum christianam dividens plebem, adiunctis sibi eiusdem factionis episcopis, Maiorinum apud Carthaginem ordinavit episcopum. Cui Maiorino Donatus alius in eadem divisione successit, qui eloquentia sua sic confirmavit hanc haeresim ut multi existiment propter ipsum potius eos Donatistas vocari. Exstant scripta eius ubi apparet eum etiam non catholicam de trinitate habuisse sententiam, sed quamvis eiusdem substantiae, minorem tamen Patre Filium, et minorem Filio putasse Spiritum Sanctum. Verum in hunc quem de trinitate habuit eius errorem Donatistarum multitudo intenta non fuit, nec facile in eis quisquam, qui hoc illum sensisse noverit, invenitur* (Petschenig).

One might be inclined to wonder why Augustine pulls back from the full strength of the allegations against the Donatists to Boniface when there was so much more that he could have said. Since at least 398 when Augustine wrote *Ep.* 44, he had been aware of the possibility of Donatist alliances with ‘Arian’ parties in the fourth century. Nevertheless, he says nothing of this to Boniface.

Perhaps part of the reason for Augustine’s reluctance to tell Boniface the whole story has something to do with Augustine’s awareness of what had happened as a result of the letter to Donatus. As argued in chapter one, the letter to Donatus from the eastern bishops probably resulted in the Macarian repression by Constans’ soldiers. The letter was produced to Augustine by Fortunius in the context of a discussion of the persecution of Macarius, and Augustine was acutely aware of the Donatists’ polemical use of the legacy of Macarius.³⁵² So Augustine does not raise the soldier Boniface’s fears to a level where he cannot calm them quickly. Instead, he alleges enough for the evidence of Donatist Trinitarian deviance to fit within the broader picture that Augustine painted for Boniface: that the Donatists were opportunistic.

Boniface’s own complicated relationship with Augustine is well known, and Boniface’s subsequent actions in the early 420s probably confirmed Augustine’s cautious intuition about alleging too much to this practical soldier.³⁵³ Only a few years after this letter, Boniface’s Catholic wife died and Boniface remarried an ‘Arian’ heiress.³⁵⁴ Amidst other discouraging actions such as taking a concubine, Boniface then had his daughter baptized in an ‘Arian’

³⁵² The surrounding sections of this discussion in Augustine’s *Ep.* 44 are taken up with discussions of Macarius and Fortunius’s questions posed to Augustine about persecution. See *Ep.* 44.2.4, 44.4.7.

³⁵³ For a more detailed discussion, see Brown, *Augustine of Hippo*, 425–9.

³⁵⁴ Augustine and Alypius encouraged Boniface to stay in the imperial service in 420 at a time when Boniface seems to have briefly flirted with leaving the military and joining a monastery. We learn this from Augustine in *Ep.* 189 and *Ep.* 220.6.

ceremony.³⁵⁵ So perhaps Augustine shies away from closely identifying the Donatists with ‘Arians’, sensing that Boniface was himself already perched on the theological fence.

What Augustine needed to show Boniface was that the Donatists were opportunistic enough to make common cause with a variety of parties inside and outside North Africa. So Augustine alleges as much to Boniface, but no more. He clearly did not want to repeat the mistakes of Gratus during the Macarian persecution.³⁵⁶

The evidence demonstrates that Augustine did not believe the majority of Donatists to be ‘Arian’ in their Trinitarian theology. Nevertheless, the increasing fragmentation that had occurred within the Donatist ranks ever since the time of the appeal to Taurinus in ca. 340, and most especially in the case of the Rogatist and Maximianist schisms, gave Augustine some polemical room to allege the possibility that ‘some of them’ were heterodox in their Trinitarian theology.³⁵⁷ Further explorations of Donatism in the age after Augustine would do well to recognize both the fragmentation of the Donatist Church that allowed Augustine to make this claim and the fact that

³⁵⁵ Brown, *Augustine of Hippo*, 425—9; see also Augustine’s remonstrance of Boniface for this in *Ep.* 220.4: ‘While, then, we were rejoicing that you had this resolve, you crossed the sea and took a wife. But crossing the sea was a matter of obedience that, according to the apostle, you owed to higher authorities; on the other hand, you would not have taken a wife if you had not abandoned the continence you had undertaken and been conquered by concupiscence. After I found this out, I admit, I was dumbfounded in amazement. The fact that I heard that you refused to marry her unless she first became Catholic eased my sorrow to some extent, and yet the heresy of those who deny the true Son of God has been so influential in your home that your daughter was baptized by them. Now, if what was reported to us is not false – though I wish it were false – namely, that even young women consecrated to God have been rebaptized by these heretics, with what great fountains of tears should we not bewail so great an evil? People also say, though they may be lying, that a wife was not enough for you but that you defiled yourself by affairs with various concubines’ (tr. Roland Teske, *Letters 211 – 270, 1* -- 29**, The Works of Saint Augustine, A New Translation for the 21st Century, ed. John E. Rotelle, II/4 (Hyde Park, NY: New City Press, 2005), 74.

³⁵⁶ Cf. *c. Gaudentium*, in which Augustine describes at length the violence of the Donatists in Numidia at this same time.

³⁵⁷ It should be noted that there was fragmentation in the Donatists’ ranks from the outset, but the diversity that Augustine discerned in Donatism following the Donatist appeal in ca. 340 allowed him to make the case that some of the Donatists believed one thing while others did not.

Augustine does not seem to have believed that it applied to the majority of the Donatists, and especially not their leaders.

The Vandal Invasion

We turn now to a brief look at the Vandal invasion of North Africa. In May 429, approximately 80,000 Vandals,³⁵⁸ Alans, Goths, and other ‘barbarians’ led by the Vandal king, Geiseric,³⁵⁹ crossed over from Spain into North Africa.³⁶⁰ Hippo was briefly besieged, but then the Vandals departed. Augustine then died in August of 430 in Hippo, and shortly thereafter the city fell to the Vandal army.³⁶¹ The traditional narrative of events, rooted in the accounts of Procopius and Jordanes, confirms Augustine’s caution about Boniface’s relationship with ‘Arian’ parties. In that account, Boniface had feuded with Aetius in the imperial court and called upon the Vandals to come to his assistance, but then called them off only after it was too late.³⁶²

The Vandals moved through North Africa, succeeding in coercing a treaty from the Emperor in 435, but then took the city of Carthage in 439, resulting in another treaty with the Emperor Valentinian III in 442.³⁶³ Geiseric’s reign of almost fifty years marked a string of successes against the Roman Empire, including the sack of Rome in 455 following the assassination of Valentinian III in order to enforce the marriage of the Theodosian princess, Eudocia, to Geiseric’s son Huneric.³⁶⁴ Geiseric also succeeded in defeating a large fleet of imperial ships sent by the Eastern Emperor, Leo, in 468 and then secured a treaty with the Eastern Emperor, Zeno, in 474. Geiseric awarded large portions of North Africa to his soldiers,

³⁵⁸ For an excellent discussion of the etymologies of ‘Vandillii’ and ‘Vandali’, see Andrew Merrills (ed.) *Vandals, Romans and Berbers: New Perspectives on Late Antique North Africa* (Aldershot: Ashgate, 2004), 32—3.

³⁵⁹ On Geiseric, see Jordanes, *Getica*, 33.168.

³⁶⁰ See Victor, *History of the Vandal Persecution*, 1.2.

³⁶¹ Brown, *Augustine of Hippo*, 423—37.

³⁶² Procopius, *Bellum Vandalorum*, 1.3; Jordanes, *Getica*, 33.169.

³⁶³ Merrills, *Vandals, Romans and Berbers*, 40.

³⁶⁴ *Ibid.*

the so-called *sortes Vandalarum*, and ruled much of North Africa for the next five decades. During that same time, the ‘Arian’ Geiseric also engaged in persecution of the Catholic Christians.³⁶⁵

The extant descriptions of Geiseric’s persecutions of the Catholic Christians in North Africa are largely derived from Victor’s *History* and include the accounts of torture and banishment of Catholics.³⁶⁶ However, the Vandal persecution of Catholic Christians is outside of the scope of this investigation as there is no indication as to whether the Christians persecuted were Donatist or Catholic. Of course, the methods by which the Donatists were brought back into the Catholic communion, methods which were designed to blur the clear distinctions between Donatists and Catholics, and permit the Donatists to return formally on procedural grounds, is probably the reason for this. In any event, Geiseric died in January 477 and was succeeded by his oldest son, Huneric, who embarked on a persecution. Here, Victor’s account becomes more interesting for discerning the fate of Donatism in Vandal North Africa. As noted by Andrew Merrills, ‘the Vandal king could use those [anti-Donatist] laws to his advantage which had been used to suppress heretics under the Roman empire.’³⁶⁷ Moreover, an interesting comment from Victor sheds some light on the broader scope of this investigation when he observes that:

³⁶⁵ The motivations behind Geiseric’s and Huneric’s alleged persecutions of the Catholics in North Africa are outside the scope of this study. See Merrills, *Vandals, Romans and Berbers*, 44. For the complicated matter of ‘barbarian’ identity as ‘Arians’, see the excellent *Arianism: Roman Heresy and Barbarian Creed*, ed. Guido M. Berndt and Roland Steinacher (Farnham: Ashgate, 2014). See also Jonathan Conant, *Staying Roman: Conquest and Identity in Africa and the Mediterranean, 439—700* (Cambridge, Cambridge University Press, 2012).

³⁶⁶ Victor, *History of the Vandal Persecution*, 1.4—1.51.

³⁶⁷ Andrew Merrills, *Vandals, Romans and Berbers*, 44, noting that ‘[t]his may of course be an exaggeration coming from the Catholic apologist.’ Merrills goes on to note: ‘Both of Huneric’s decrees, which Victor of Vita quotes, represent cutting-edge rhetoric for the confessional disputes of the time. The methods of persecution, alternating between repression and attempts to convince, were in no way different to those used in the empire. The only difference was that the Roman Church was the victim in this case. In the African Church, with its strong, independent currents, this was bound to have some success.’ See also Phillip Wynn, ‘Rufinus of Aquileia’s Ecclesiastical History and Victor of Vita’s History of the Vandal Persecution’, *Classica et Medievalia* 41 (1990): 187—98.

Following the death of Geiseric, his eldest son, Huneric,³⁶⁸ succeeded his father. In accordance with the subtlety of the barbarians, at the beginning of his reign he began to act in quite a mild and moderate fashion. This was particularly so with respect to our religion, so that meetings of the people were held even when it had previously been decided under king Geiseric that spiritual assemblies were not to take place. And, to show that he was a man of religion, *he decreed that the Manichaeans heretics were to be sought out with painstaking care. He had many of these people burned, and he sold more of them for ships across the seas.* He found that nearly all of the Manichaeans were adherents of his religion, the Arian heresy, especially its priests and deacons; so it was that, the greater his shame, the more he was kindled against them.³⁶⁹

Here, the imperial anti-Manichaean legislation of 381 (*CTh.* 16.5.7) discussed in Chapter two emerges once again in a fleeting way. Moreover, the fact that Victor might simultaneously depict Huneric as a persecutor for repressing Victor's Catholic communion, and commend him for persecuting Victor's theological opponents, 'to show that he was a man of religion; *ut se religiosum ostenderet*',³⁷⁰ discloses an attitude that offers another glimpse into the realities of fifth-century North African ecclesiastical controversy -- controversy in which this thesis argues the Donatists were full participants.

³⁶⁸ 25 January 477 (Victor, *History*, tr. Moorhead, 24, note 1.

³⁶⁹ Victor, *History of the Vandal Persecution* 2.1 (tr. Moorhead, 24); emphasis added. *Mortuo igitur Geiserico Huniricus maior filius patri succedit. Qui in primordia regni, ut habet subtilitas barbarorum, coepit mitius et moderatius agere, et maxime circa religione nostram; ut etiam ubi antea sub rege Geiserico praeiudicatum fuerat, ne spirituales fierent conuentus, conuenticula concurrerent populorum. Et ut se religiosum ostenderet, statuit sollicitius requirendos hereticos manicheos; ex quibus multos incendit, plurimos autem distraxit nauibus transmarinis. Quos paene omnes Manicheos suae religionis inuenit et praecipue presbyteros et diaconos Arrianae hereseos; unde magis erubescens amplius in illis exarsit.*

³⁷⁰ *Ibid.*

The Vandal Anti-Catholic Legislation of 484

During Huneric's reign, the Catholics were summoned to a conference and the legislation imposed against them was largely a rewritten form of the imperial legislation of 411. It is one interesting instance of evidence for Donatist survival in the Vandal period. We find it in the Vandal anti-Catholic legislation of 484. As Eric Fournier has shown, the legislation was largely a pastiche of the Catholic anti-Donatist legislation of 411. The legislation is preserved in Victor's *History* and imposed stiff penalties against Catholics in North Africa.

In pertinent part, Victor's recounting of the Vandal legislation reads:

They went on to order that all the books of the priests whom they persecuted were to be cast into the fires, and we order that this is to be done in the case of books of this kind, from which their bad people argue for their erroneous belief. It is said that they ordered that these things were to be observed with respect to each individual person: the *illustres* were each to pay fifty pounds of gold, *spectabiles* forty pounds of gold, senators thirty pounds of gold, decurions five pounds of gold, merchants five pounds of gold, common people five pounds of gold, and *circumcelliones* ten pounds of silver; and if any persons happened to persist in this wickedness, all their goods were to be confiscated and they were to be punished with exile.³⁷¹

One of the most recent treatments of this legislation assumes that the reference to the circumcellions is carried over from the prior anti-Donatist legislation from 411.³⁷² Given the

³⁷¹ Victor, *History* 3.10 (tr. Moorhead, 67).

³⁷² For a fuller discussion of the striking similarities between the legislation of 411 and the laws of 484, see Fournier, 'Victor of Vita', 396—400, and in particular Fournier's judgement that Huneric had 'recycled a number of Honorius' laws against "Donatist" [*sic*]' (196—7). See also J.E. Atkinson, 'Out of Order: The Circumcellions and Codex Theodosianus 16, 5, 52', *Historia* 41.4 (1992), 488—99. Atkinson argues that 'They [the circumcellions] were marked out for punishment again in a decree issued by Huneric in February 484, but as the formulation matches that of the constitution of 412, the clause may be tralatician and may thus not attest that the Circumcellions were still active' (488).

many similarities between the punishments imposed here and the punishments imposed in the anti-Donatist legislation (cf. *CTh.* 16.5.52), that is quite possible. However, this chapter has demonstrated Augustine's capable use of the fragmentation in the Donatist party which permitted him to raise imperial concerns that 'some of' the Donatists were heretics liable to ally themselves with 'Arians'. Interestingly, Augustine's entry on the Donatists (or Donatians) in chapter 69 of the *De Haeresibus* has a separate entry for the heresies of the circumcellions.

There also pertain to this heresy in Africa those who are called Circumcellions, a wild kind of human being whose boldness is known far and wide, not only because they perpetrate terrible crimes on others, but because they do not spare even their own members in their mad fury. For they are accustomed to kill themselves in various ways, especially by hurling themselves off cliffs or into water or fire, and they lead others whom they can of both sexes into this madness, at times in order that they might be killed by others, threatening them with death, unless they kill them. Nonetheless, such persons do not find favor with most Donatists, nor do they think that they are contaminated by communion with them, but in their madness they charge the Christian world with the crime of these unknown Africans.³⁷³

³⁷³ *De Haeresibus*, 69.4. (tr. Teske, *Arianism and Other Heresies*, 51); *Ad hanc haeresim in Africa et illi pertinent qui appellantur Circumcelliones, genus hominum agreste et famosissimae audaciae, non solum in alios immania facinora perpetrando sed nec sibi eadem insana feritate parcendo. Nam per mortes varias, maximeque praecipitiorum et aquarum et ignium, seipsos necare consuerunt, et in istum furorem alios quos potuerint sexus utriusque seducere, aliquando ut occidantur ab aliis, mortem, nisi fecerint, comminantes. Verumtamen plerisque Donatistarum displicent tales, nec eorum communione contaminari se putant, qui christiano orbi terrarum dementer obiiciunt ignotorum crimen Afrorum* (Petschenig).

Augustine also has a separate entry for the so-called Montenses.³⁷⁴ All of these separate entries in the *De Haeresibus* reflect a great deal of diversity among the various groups of Donatists when Augustine wrote about them in the late 420s. Moreover, we know that the Donatists themselves had appealed for imperial aid against the circumcellions in the past, especially in about the year 340 with their appeal to Taurinus. Thus, a reference to a Donatist ‘*tranuensor*’ Nicasius dying alongside Huneric in 484 is not inconsistent with the possibility that the *circumcelliones* and the Donatists had some influence in the court of Huneric at the same time.

What this chapter has shown is that Augustine’s allegations were narrowly calibrated both to induce imperial coercive action and to leave the Donatists with room to come back to Augustine’s church with a minimum of effort. Probably, Augustine and the Catholic party were keen to avoid setting up a litmus test for readmission to the Catholic communion, anything that could be seen as a rallying point for the Donatists or a continuation of the actions of persecutors. It is a legal strategy that any judge would know to employ against a recalcitrant defendant. It is procedurally simple, it makes compliance easy, and it avoids the possibility of principled non-compliance as much as possible.

Moreover, in both cases discussed in this chapter, the best lens through which to see these allegations about the Donatists’ Trinitarian theology is Augustine’s juridical strategy of labeling the Donatists as political opportunists. It is a point that we will turn our attention to in chapter four, especially with respect to Augustine’s allegation that the Donatists had been the first to appeal to Constantine.

³⁷⁴ *De Haeresibus*, 69.3: *Isti haeretici in urbe Roma Montenses vocantur, quibus hinc ex Africa solent episcopum mittere, aut hinc illuc Afri episcopi eorum pergere, si forte ibi eum ordinare placuisset*; ‘In the city of Rome, these heretics are called Montenses. They usually send a bishop to them from here in Africa, or African bishops of theirs go from here to Rome, if they have decided to ordain a bishop there’ (tr. Teske, *Arianism and Other Heresies*, 51).

CHAPTER FOUR

A CASE OF *CALUMNIA*: AUGUSTINE'S USE OF THE DONATIST APPEALS OF 313 AND 406 AT THE CONFERENCE OF 411

The Donatist controversy was largely fought over legal evidence, and nowhere is that more apparent than in the juridical proceedings of the Conference of 411. Accordingly, this chapter follows the examinations of Donatist appeals from 313 to 406 in chapters 1—3 and shows how Donatist advocates at the Conference of 411 carefully sought to create a legal record that could undergird any future Donatist appeal to imperial officials. We begin chapter four with an examination of the Donatist legal strategy at 411 and show how Augustine's own polemical strategy of labeling the Donatists as the initial persecutors was turned against him by the Donatist request for recognition as the church that 'suffers persecution but does not persecute' (*Coll. Carth.* III, 258). Then we go on to examine Augustine's procedural arguments that the Donatists had first appealed to the emperor in 406, a point on which Augustine had very little legal evidence and concerning which at this juncture the Catholic party was reluctant to provide evidence to Marcellinus. We then return to the decisive argument raised by Augustine that it was the Donatists who had initiated the entire controversy with their incontrovertible appeal to Constantine in 313. Finally, this chapter concludes with a discussion of Augustine's awareness of the Roman legal principle of *calumnia* and the punishment for making a false rescript request, and how those Roman legal principles shaped Augustine's argument that the Donatists were the party of *calumniatores* receiving a just punishment for lying in their rescript request to the emperor (*Ep.* 93.4.13, *Ep.* 185.2.6, *In Jn. tract.* 7.11).

4.1 The Evidence for Augustine's Use of the Donatist Appeal to Constantine

In pursuing this goal, the chapter will examine the extant records of the Conference of Carthage, most especially the official *Acts* edited by Serge Lancel,³⁷⁵ Augustine's own summary of the Conference in the *Breviculus collationis cum Donatistis*³⁷⁶ and the *Capitula Gestorum* of Marcellus³⁷⁷ are also consulted in this chapter, but the focus of its examination is the official Acts. Building on and carrying forward the recent treatment of the legal aspects of the Conference of 411 in Erika Hermanowicz's *Possidius of Calama*, we will then turn to Augustine's *Ep.* 93 and *Ep.* 185, where Augustine clearly articulates the rationale for his juridical cause of action against the Donatists, based on a claim that the Donatists lied in their appeal to the emperor Constantine. We also examine his *Tract.* 7 on the Gospel of John,³⁷⁸ where

³⁷⁵ In Lancel, *Actes* (1972—5), and again in *Gesta conlationis Carthaginensis* (1974).

³⁷⁶ Augustine, *Breviculus conlationis*, in *Gesta conlationis Carthaginensis*, ed. Lancel, 259—306.

³⁷⁷ For Marcellus' *capitula*, see Lancel, *Gesta Conlationis Carthaginensis*, xv—xix.

³⁷⁸ Sancti Aureli Augustini *Tractatus in Johannis Evangelium tractatus CXXIV*, ed. R. Willems, CCSL 36 (Turnhout: Brepols, 1954).

Augustine evinces his specific awareness of the legal principle of *calumnia*³⁷⁹ in his particular North African juridical context. Although Augustine also used the evidence for the Donatist appeals to Constans, Julian, and other imperial authorities in his anti-Donatist polemic, and those appeals will be noted in due course in what follows and in chapter five, this chapter is primarily focused on Augustine's claim that the Donatists initiated the 'lawsuit' that would become the Donatist controversy. As will be shown in this chapter, it was the Donatists' appeals to Constantine in 313 and Honorius in 406 that shaped Augustine's legal strategy at 411 and his broader claim that the Donatists were *calumniatores* being punished under Roman law.

³⁷⁹ For *calumnia* as a technical legal term describing 'the bringing of an action in bad faith', see C.T. Lewis and C. Short, *A Latin Dictionary* (Oxford: Clarendon Press, 1886), s.v. I.b.4. For an ecclesiastical penalty consistent with this principle, see Canon 15, Arles (314): 'Concerning those who falsely accuse their brethren, it seemed good that they not receive communion even to death' (my translation, from the Twenty-two Canons (Gaudemet, *Conciles*, 52—4)). *Calumnia* and *subreptio* should be clearly distinguished in that the former applies to criminal trials, the latter to the solicitation of rescripts. *Calumnia* seems to be the more prominent allegation by Augustine against the Donatists and is a term widely attested in Augustine's extant corpus with a basic word search revealing 106 Latin usages, of which many attestations of the word can be found throughout his anti-Donatist works. In particular, a word search of *calumnia* reveals its use in many of Augustine's anti-Donatist works such as his *Epp.* 51, 88, 93, 129, 141, 185, *Ad Donatistas post Collationem*, *Contra epistulam Parmeniani libri tres*, *De unico baptismo contra Petilianum*, *Contra Gaudentium Donatistarum episcopum libri duo*, *Gesta collationis carthaginiensis*, *Contra Cresconium grammaticum donatistam*, *De Baptismo contra Donatistas libri septem*, *Contra litteras Petiliani donatistae libri tres*, *Breviculus collationis cum Donatistas*, *Epistula ad Catholicos de secta Donatistarum*, and *Sermo* 266, *Sermo* 340A, and *Sermo* 359. These works span the course of Augustine's extant anti-Donatist literary output. In each case reviewed, the usage of the term is fairly static and seems to be utilised consistently by Augustine to portray his Donatist opponents as dishonest parties who had brought false claims against the Catholic communion.

4.2 The Place of Donatist Appeals to Constantine and Honorius at Carthage in 411

The Conference of Carthage

‘Januarianus and the other bishops of the Catholic truth that suffers persecution but does not persecute’³⁸⁰ – the Donatist *mandatum* submitted at Carthage in 411 encapsulates the Donatists’ public posture at the Conference. As we have seen, the Donatists had spent the last century appealing to Roman authorities, with varied results. But this was not the time for the Donatists to appeal to the authorities, it was the time to cast themselves as the party of the persecuted. It was a good legal strategy, but more importantly, it was the only strategy available to the Donatist party under the circumstances. The argument of this chapter is that their strategy was extremely well conceived and that it required certain desperate legal maneuvers by Augustine and the Catholic party to thwart it. We first turn our attention to the events leading up to the Conference.

The Catholic Position Going in to the Conference of 411

The Catholic leadership had much cause for optimism going in to the Conference of 411, which was held from 1 to 8 June. Honorius’ letter to Marcellinus, ‘*uir clarissimus, tribunus et notarius*’, specifically described the Donatists as a vain error and superfluous dissension (‘*uano errore et dissensione superflua*’).³⁸¹ In a certain sense, the emperor’s posture towards the Donatists meant

³⁸⁰ *Coll. Carth.* III, 258. See Frend’s discussion of this attitude of the Donatist party at the Conference of 411 in *Donatist Church*, 275–99.

³⁸¹ ‘*Ut etiam donatistes uel terrore uel monitu olim <iam> implere conuenerat, qui Africam, hoc est regni nostri maximam partem et saecularibus officiis fideliter seruientem, uano errore et dissensione superflua decolorant ...*’ (*Gesta conlationis Carthaginensis* 1.3). I owe this point to Dr Aaron Pelttari. For more detailed discussions of the parties’ legal and polemical strategies at 411, see Hermanowicz, *Possidius of Calama*, 190–210; Brent D. Shaw, ‘African Christianity: Disputes, Definitions and “Donatists”’, in Malcolm R. Greenshields and Thomas A Robinson (eds), *Orthodoxy and Heresy in Religious Movements: Discipline and Dissent* (Lewiston, NY: Edwin Mellen, 1992), 5–34, reprinted in Shaw, *Rulers, Nomads, and Christians*, no. 11; Tilley, ‘Dilatory Donatists or Procrastinating Catholics’.

that the Conference's legal outcome was assured.³⁸² However, that is also a dangerous position to be in for any advocate. Ecclesiastical conferences had not always gone as planned; and if there is one thing that legal and ecclesiastical advocates dislike, it is being surprised. Despite the unprecedented nature of imperial involvement and planning that went into ensuring that the conference would be a victory for the Catholic party, Augustine was still keen to avoid surprises for the Catholic party at all costs.³⁸³

Moreover, imperial policy in the six years since the Edict of Unity had been anything but uniform. Writing to Vincentius in 408, Augustine spoke of many Donatists being brought back into the Catholic communion by means of the laws of the emperor.³⁸⁴ Then, in the same year, Stilicho fell from power and was executed along with his family.³⁸⁵ The Donatists interpreted this as an opportunity to get out from under the imperial laws from 405. We see real concern in

³⁸² Following Hermanowicz's judgement here that, 'Marcellinus may have been a gentleman, but he was obligated by law to subscribe to Honorius' directives. He was to repress Donatism in favor of Catholicism and all that "antiquity and religious authority had established" (I, 4). The conference was to confirm the Catholic faith. Honorius had said as much' (*Possidius of Calama*, 196). Hermanowicz's recent treatment of the Conference of 411 (especially at *Possidius of Calama*, 190—210) has greatly advanced our understanding of the legal aspects of the Conference since Serge Lancel's excellent treatment of the subject in Lancel, *Actes*, 1, 66—88. Much of what follows is heavily dependent on these two treatments of the legal aspects of the Conference but also brings a broader perspective to the table based on the foregoing examination of the Donatists' own appeals and Augustine's use of them in the context of his anti-Donatist polemic.

³⁸³ This is evident in Augustine's decision to quickly summarize the Conference proceedings and promulgate his account of what transpired throughout North Africa in his *Breviculus conlationis cum Donatistis*.

³⁸⁴ *Ep.* 93.5.17: 'For the first argument against me was my own city. Though it was entirely in the Donatist sect, it was converted to the Catholic unity out of fear of the imperial laws, and we now see that it detests the destructiveness of this stubbornness of yours so that no one would believe that it was ever a part of it. And it was the same with many other cities, which were reported to me by name, so that I might recognize by the very facts that one could correctly understand the words of scripture as also applying to this case, *Give a wise man a chance, and he will become wiser*' (tr. Teske, *Letters I – 99*, 387). See also *Ep.* 93.5.18 for similar remarks on the success of the imperial legislation of 405.

³⁸⁵ McEvoy, *Child Emperor Rule*, 180—6.

Augustine's letters to Olympius (in 408) and Donatus (late 408), lobbying with both officials³⁸⁶ to keep the imperial measures in force against the Donatists.³⁸⁷ Even more concerning for the Catholic party, in 410 Honorius had made a statement which was interpreted by many to be an 'edict of toleration'. As Hermanowicz has shown, Honorius' statement of toleration was probably a case-specific concession, perhaps to win the favor of an 'Arian' general whose support Honorius needed during that precarious period.³⁸⁸ Perhaps Honorius was also concerned to keep the grain flowing to Rome. In any event, it was this statement of toleration that caused the Catholic party to appeal to Honorius in 410 requesting that the Edict of Unity of 405 continue to be enforced against the Donatists.³⁸⁹ When Honorius did order the Conference to take place, he also returned the Donatists' churches to them for the duration of the Conference. In an

³⁸⁶ In 408 Olympius was *magister officiorum* (West). After Stilicho's murder (which he had arranged), his 'influence was now supreme': *PLRE* 2, 801—2 ('Olympius 2'), at 801. Donatus was proconsul of Africa in 408 (*PLRE* 2, 375—6 ('DONATVS 1')).

³⁸⁷ *Ep.* 97.3 (to Olympius): 'I have no doubt that this advice, which I give to Your Excellency in asking this or rather suggesting it, is in accord with the will of all my colleagues throughout Africa. I think that, wherever the occasion first arises, you can most easily and ought quickly, as I said, to inform those foolish people whose salvation we are seeking, though they oppose this, that it was the son of Theodosius rather than Stilicho who had taken care to send the laws that were sent for the defense of the Church of Christ' (tr. Teske, *Letters 1 – 99*, 424); '*Hoc autem quod petendo vel suggerendo admoneo praestantiam tuam, non dubito omnium per Africam collegarum meorum fieri voluntate; arbitrorque quacumque primitus exorta occasione facillime posse ac debere maturari, ut noverint, sicut dixi, homines vani, quorum et adversantium salutem requirimus, leges quae pro Christi Ecclesia missae sunt, magis Theodosii filium quam Stilichonem curasse mittendas.*' *Ep.* 100.2 (to Donatus): 'Meanwhile, let the Donatist heretics know right away by an edict of Your Excellency that the laws issued against their error remain in effect, laws that they think and boast now have no force so that they need not, even in that way, spare us at all' (tr. Roland Teske, *Letters 100 — 155*, *The Works of Saint Augustine, A New Translation for the 21st Century*, ed. John E. Rotelle, II/2 (Hyde Park, NY: New City Press, 2003), 16; '*Cito interim per edictum Excellentiae tuae noverint haeretici Donatistae, manere leges contra errorem suum latas, quas iam nihil valere arbitrantur et iactant, ne vel sic nobis parcere aliquatenus possint.*' Both of these letters will be discussed at greater length in chapter five.

³⁸⁸ See Hermanowicz' helpful discussion of this in Hermanowicz, *Possidius of Calama*, 188—91.

³⁸⁹ *Registri Excerpta*, 107, from Conference of Carthage, 15 June 409 (CCSL 149, 220) ; Hermanowicz, *Possidius of Calama*, 188.

ecclesiastical context where possession was such an important part of the law, this must have been greatly concerning to the Catholics.³⁹⁰ As such, going in to the Conference of 411, the Catholic party held most, but certainly not all, the cards, as we shall see. The most important fact that both parties were aware of is the point that has been made clear in the preceding three chapters on the history of Donatist legal appeals. The Donatists' fate so often depended on the posture of the imperial authorities at the time they made their appeal. Thus, the Donatists would have known going in to the Conference that this was unlikely to be their last real chance to appeal.³⁹¹ That it was, effectively, the end of Donatist power in North Africa, is the judgement of hindsight and should not be attributed to the parties in dispute at the time.

The Donatists' Legal Strategy at the Conference of 411

Still, the Donatists had been summoned to the Conference by an emperor who described their Church in the most unflattering of terms. It was not a good way for the Donatists to begin their trial. This was, as we have already seen, not intended to be a fair trial. Rather, it was intended to appear to be a fair trial: one in which the Donatists would be given every procedural courtesy with no chance of prevailing. In short, it was a situation ready-made for a legal advocate like Petilian to exploit, and herein lay the genius of the Donatists' defensive strategy.³⁹² Knowing

³⁹⁰ For discussions of prior incidents involving attempted imperial invasions of church property see McLynn, *Ambrose of Milan*, 158—219; Barnes, *Athanasius and Constantius*, 87—93, 165—75.

³⁹¹ Frend, *Donatist Church*, 285, summarizing Donatist legal strategy: 'Petilian's plan of action was from thenceforward to be regarded as the preliminary hearing of a lawsuit, which in any case should be referred back to the Imperial Court. Meantime, proceedings were to be made as complicated and intricate as possible.'

³⁹² See Lancel's judgement on Petilian, 'A la Conférence de 411, il le fit surtout en avocat' Lancel, *Actes*, 1, 234. For an excellent discussion of the extensive juridical experience and qualifications of most of the Donatist *defensores* at the Conference of 411, see Caroline Humfress, *Orthodoxy and the Courts in Late Antiquity* (Oxford: Oxford University Press, 2007), 188, and for informative discussions of the place of forensic practice in ecclesiastical disputes, see more generally, Humfress, *Orthodoxy and the Courts*, 153—95.

they had no chance of prevailing with their judge already predisposed against them by the imperial order, they set out to use his concern for appearances against the Catholics.³⁹³

At a basic level, the Donatists muddled the Catholic party's record of the proceedings. For example, the Donatist party's bishops chose to stand on ceremony – literally – exasperating the Catholic advocates, who were keen to get a clear and concise verdict that could be used to bring an end to Donatist influence in North Africa.³⁹⁴ Of course, the Donatists' strategy in this regard was not one that would ever be designed to win the favor of a judge, especially if that judge were also sitting in the crowded scriptorium of a North African bathhouse in the month of June. But the Donatists were not trying to convince Marcellinus. Rather, they were using against Marcellinus his concern that the proceedings seem fair and impartial. It was a capable legal strategy, but more importantly it is often the only one available to a party in a trial with a predetermined outcome.

Moreover, while the polemical nature of these complicated procedural negotiations has received a great deal of scholarly attention, one aspect of the Donatists' procedural legal strategy has received much less attention: the extent to which the Donatists were establishing the precedent for a future appeal. It is to that aspect of Donatist legal strategy that we now turn our attention. Of course, emperors often died unexpectedly, and the Donatists pursued a strategy

³⁹³ As Neil McLynn has shown, Marcellinus was not as close to Augustine at the outset of the Conference as many have assumed: McLynn, 'Augustine's Roman Empire', 40—1. The effective legal strategy employed by Augustine, as discussed in this chapter, may have been part of the reason for the improved relations between the two as McLynn noted, comparing exchanges between the two at *Gesta conlationis Carthaginensis* 1.78—83 and 3.19—21 (McLynn, 41, note 42).

³⁹⁴ *Gesta conlationis Carthaginensis*, 1.144—5: *sed quoniam uires dominus subministrat, ipsamque reuerendam senectutem facit esse fortiolem, non erubescimus, non ueremur, non euitamus te residente, uir nobilis, libenter adsistere. Siquidem hoc nec dominus noster Christus uitauerit cum ante praesidem stetisse dignatus est, quanto magis nos non recusamus, cum tu honorificus, tu iustus, tu reuerens, tu benignus hanc offeras gratiam quae tibi a domino remuneratore dignissimis praemiis frequentissime referatur?* For more on the Donatist strategy of standing for much of the conference, see Thomas Graumann, 'Upstanding Donatists: Symbolic Communication at the Conference of Carthage (411)', *ZAC/JAC* 15.2 (2011): 329—55.

calculated to appeal to a more impartial audience at some future time.³⁹⁵ It has also been noted for quite some time in the scholarship that the Donatists sought to label the Catholic party as the accusers.³⁹⁶ However, what has been largely overlooked in scholarship on 411 until quite recently are the legal ramifications of such an identification of a party as the plaintiff. The recent work of Hermanowicz on this point has gone a long way towards demonstrating the legal nature of the precedents both parties were attempting to establish in this regard.³⁹⁷ The goal of what follows is to build on Hermanowicz's study of 411 by placing the procedural maneuvers of the parties into their broader context, both in the study of the Donatists' appeals as set out in chapters one, two, and three, and in the use that Augustine made of those appeals in defeating the Donatists' efforts to have the Catholic party identified as the plaintiff at 411.

We see this clearly when the Donatists requested that Marcellinus make an apparently simple adjudication on a fairly straight-forward point of procedure. They asked Marcellinus for a preliminary determination as to the matter of *personae*.³⁹⁸ They requested Marcellinus to rule that the Catholic party was the legal plaintiff in the case as the party who had initiated the appeal

³⁹⁵ Augustine's *Breviculus* was designed to counter that and largely overshadowed the Donatists' efforts. For an excellent discussion of the motivation for Augustine's *Breviculus*, see Lancel's introduction to the *Gesta conlationis Carthaginensis*, xiii—xv. See also Hermanowicz's judgement on the Donatist strategy at 411: 'There would come a day when they could present this information when appealing to more sympathetic ears. Emperors lived for only so long' (*Possidius of Calama*, 220).

³⁹⁶ For example, Frend, *Donatist Church*, noting that, 'The immediate objective [for the Donatist advocates] was to secure that the Catholics should be put into the position of the accusing party, on the grounds that they had first demanded the conference ... Once that point was made, the Donatists would challenge the personal worth of their accusers and thus, on Donatist standards, their fitness as clergy' (285). For reasons we will see, Frend's observation that 'Petilian and Emeritus found their match as advocates in the superb debating skill of Augustine, seconded by Alypius of Thagaste' (279) is apt.

³⁹⁷ Hermanowicz, *Possidius of Calama*, 190—220.

³⁹⁸ *Gesta conlationis Carthaginensis*, 1.6—8: 'Marcellinus: ... *si placeret, electus a vestra parte mecum alius cognitor resideret; qui si praesto est, introire dignetur*. Petilian: *Non decet nos cognitorem eligere alterum, qui non petivimus primum*. Marcellinus: *Evidentissime praeceptionis augustae tenore declaratum est collationem, non cognitorem, fuisse postulatum*. (Also cited by Hermanowicz, *Possidius of Calama*, 203).

to the emperor which resulted in the Conference of 411.³⁹⁹ On its face, the request was straightforward and procedural, and it should have been granted quickly on straight-forwardly procedural grounds by Marcellinus. That it did not meet with such a quick determination has a lot to do with Augustine's and Marcellinus' legal acumen on display in their recognition of the Donatists' strategy.⁴⁰⁰ As Hermanowicz has shown, Marcellinus' edict from earlier that year had already determined that both parties had requested the Conference.⁴⁰¹ Building on Hermanowicz's work, it is argued here that Augustine's objection to the Donatist request reflected his awareness of the Donatists' own long-standing policy of appealing to the emperors, and his legal concerns for the precedent-setting value of such a legal determination by Marcellinus on an apparently straight-forward procedural point. In short, Augustine was concerned that the Catholic party might prevail at the Conference of 411, but accidentally establish a precedent on a procedural ruling that could later be turned and used by Donatist

³⁹⁹ The Donatists knew that a plaintiff who was late to proceedings could be defaulted. At a basic level, such a procedural determination by Marcellinus could have resulted in the Catholic party (which had not arrived on time) having had the case dismissed. For a further discussion of this aspect of the Donatist and Catholic attempts to default each other, see Tilley, 'Dilatory Donatists'. Also, see more generally, Lancel, *Actes*, 1, 66–88.

⁴⁰⁰ A growing recognition of this might have caused the respect for Augustine that Marcellinus had following the Conference, as can be seen in their subsequent correspondence: *Epistles* 133, 136, 138, 139, 143. *Epistle* 143.1 from 412 reflects Marcellinus' question to Augustine about where Pharaoh's magicians found the water to imitate Moses' miracle. Augustine's response: 'This question is usually resolved in two ways, either because they had available sea water or – what is more credible – because those plagues did not occur in those areas in which the children of Israel were found. For this is stated most clearly in certain passages of that scripture, and it teaches us what we ought to understand, even where it is not stated' (tr. Teske, *Letters 100 – 155*, 301). One wonders why Marcellinus asked this question. See also Augustine's dedication of the *City of God* to Marcellinus and Neil McLynn's discussion of Augustine's dedication and Marcellinus' execution and rehabilitation: McLynn, 'Augustine's Roman Empire', 41–4.

⁴⁰¹ *Gesta conlationis Carthaginensis*, 1.5: *Consona siquidem utriusque partis petitio ad hanc principem sententiam provocavit. Nam sicut a catholicis nuper conlatio postulata est, sic ante brevissimum tempus donatarum episcopos in iudicio inlustrium potestatum conlationem postulasse non dubium est. Et quoniam libenter assensum tribuit clementia principalis et concilium fieri intra Africam universale decrevit, utriusque partis iuxta poscentibus < episcopis > huic me disputationi principis loco iudicem voluit residere.* See also Hermanowicz, *Possidius of Calama*, 201.

advocates in a more substantive manner in an appeal to a more favorable imperial audience. As Hermanowicz has noted, the Conference proceedings were being taken down in detail and ‘the transcript of the 411 conference was considered a legal document and could certainly function as evidence in appeals.’⁴⁰² Armed with his extensive knowledge of the Donatists’ appeals, Augustine was keen to avoid allowing these proceedings to give the Donatists a legal precedent for any future appeals.

However, when Augustine and the Catholic party objected to the identification of the Catholics as the plaintiffs and Donatists as defendants, the judge, inclined so strongly in their favor, found himself in a legal quandary. Marcellinus still needed to make the proceedings appear to be fair to the Donatists. Augustine, like any good advocate dealing with a friendly judge, knew exactly what to do. He gave Marcellinus a workable procedural reason to rule against the Donatists; or if not workable, *per se*, at least plausible. Augustine alleged that the Catholic party had not initiated this appeal to Honorius as the records reflected because the Donatists had actually done so in 406.

4.3 The Donatist ‘Appeal’ of 406 Revisited

The Catholic party requested the Conference of Carthage, but they did not want to be regarded as the plaintiffs in their case with the Donatists; therefore, they needed to find a reason to call the Donatists the claimants, and an apparent appeal from 406 fit their strategy. We do not, in full, know whether the Donatists appealed to Honorius in 406. As Hermanowicz has shown, the evidence for such an appeal was slight at best and the Catholic party was not particularly eager to

⁴⁰² Hermanowicz, *Possidius of Calama*, 216.

have the evidence set out in detail.⁴⁰³ It would appear that around the year 406, someone in the imperial court asked the Emperor Honorius to relax the imperial laws against the Donatists. There is no extant record of this, but the parties at 411 seem to have been aware of it. This was the argument that Augustine made to Marcellinus: that the request to relax the imperial laws was itself the appeal which had initiated the proceedings in 411.⁴⁰⁴ When confronted with the Catholic allegation, the Donatist party responded by denying that the appeal had ever taken place:

That is what we were wishing to hear declared before the tribunal, if they (the Catholic embassy) insinuated to the emperor that we presented ourselves

⁴⁰³ *Gesta conlationis Carthaginensis*, 3.168–74. Hermanowicz, *Possidius of Calama*, 201—2, notes that, ‘Unfortunately, we never see the *gesta* from 406. Despite its apparent ability to absolve them, the Donatist bishops Petilian and Emeritus adamantly protested its being put forward for review. This may rouse suspicions as to what the *gesta* actually contained, but the Donatists were not bluffing here. In civil cases there was a strict order about the submission of documents as evidence. One of the first rules, reasonably enough, is that one submitted evidence after, not before, identification of the plaintiff and defendant. Marcellinus, as we shall see presently, had different ideas about settling on *personae*, and as it turns out, the transcript from the 406 embassy was the first one put before the conference to serve as a *means* of identifying the plaintiff. It was simply intolerable to the Donatists that in light of standard procedure, as well as the fact that it was the Catholics who submitted the *preces* initiating the 411 hearing—which had not yet, and would never be, examined—their 406 visit should be submitted to scrutiny first.’ Hermanowicz goes on to ask the question, ‘I think it is telling that when a reading of the 406 *gesta* actually commenced, it was the Catholics who emphatically stopped its recitation. They said there existed earlier *gesta* (from 403) that revealed the Catholics requested the African proconsul to call a meeting before 406. Why were Possidius and Alypius anxious to circumvent the 406 transcript in order to present evidence that pointed to them as the plaintiffs?’ Hermanowicz’s question is a good one.

⁴⁰⁴ Hermanowicz, *Possidius of Calama*, 201, discussing the Catholic allegation that a Donatist embassy had requested that the praetorian prefect relax imperial legislation. As Hermanowicz notes, it would appear that the prefect declined the request, based on the evidence from Augustine’s *Ep.* 88.10 (‘And they named our holy father, the Catholic bishop, Valentine, who was at the time in the imperial court, saying that they wanted to be heard along with him. The judge, who was passing judgment according to the laws that had been established against you, was not able to grant them this request, and that bishop had not come for that purpose nor had he received some such mandate from his bishops’ (tr. Teske, *Letters 1 – 99*, 357))

voluntarily before the praetorian prefect or indeed that we asked for a debate. If this is in fact what you said, I am able to refute you before the tribunal on the basis of the text of the gesta.⁴⁰⁵

Even more creatively from a legal standpoint, Augustine and the Catholic party went back to a polemical line of attack against the Donatists that Augustine had been developing for some time.⁴⁰⁶ He made the argument that the Donatist controversy itself was a long-standing lawsuit, and one that had only come into being at the initiative of the Donatist party. Thus, Marcellinus ruled that the parties could introduce evidence of a historical nature on the origins of the controversy.

It was an innovative legal argument and ruling – one that any advocate could be proud of. The evidence for a Donatist appeal in 406 gave Marcellinus the procedural backing he needed to make the adjudication that he did not have to make a clear ruling on this point. It gave Marcellinus the justification he needed to rule that because both parties had appealed at different times, neither party should be considered the plaintiff.⁴⁰⁷

⁴⁰⁵ *Gesta conlationis Carthaginiensis*, 3.129 (tr. Hermanowicz, with Hermanowicz's excellent discussion of this, *Possidius of Calama*, 201–2). It seems probable that this 'appeal' never took place.

⁴⁰⁶ See, for example, *Ep.* 93.4.13: '... why do you raise as an objection against us what your leaders first presumed to do? For we would not blame them because they did this, if they had not done it with a heart filled with hatred and bent on harm, but with the desire for improvement and correction' (tr. Teske, *Letters I – 99*, 384).

⁴⁰⁷ *Consona siquidem utriusque partis petitio ad hanc principem sententiam provocavit. Nam sicut a catholicis nuper conlatio postulata est, sic ante brevissimum tempus donatistarum episcopos in iudicio inlustrium potestatum conlationem postulasse non dubium est. Et quoniam libenter assensum tribuit clementia principalis et concilium fieri intra Africam universale decrevit, utriusque partis iuxta poscentibus < episcopis > huic me disputationi principis loco iudicem voluit residere. Gesta conlationis Carthaginiensis*, 1.5, also and discussed in Hermanowicz, *Possidius of Calama*, 201 (note 50).

Of course, it was not the best-reasoned judgement on Marcellinus's part, and one suspects that Augustine knew that. It certainly departed from normal Roman legal precedents⁴⁰⁸ But then, Augustine also knew that sometimes it is good to have the judge on one's side, no matter the strength of the argument.

4.4 The Donatist Appeal to Honorius in 411

The judicial outcome of the Conference was a complete defeat for the Donatist party, and Marcellinus reimposed the imperial legislation of 405 and ordered the confiscation of Donatist property and the forcible repression of Donatism in North Africa. As Augustine no doubt feared they would, the Donatist party quickly sent delegates with a transcript of the proceedings to Honorius' court to ask him to overturn Marcellinus' decision at the Conference.

Possidius reports that:

For all these labors for the peace of the Church the Lord gave the palm to Augustine in this life and reserved with Himself the crown of righteousness for him. And more and more by the aid of Christ, the unity of peace, that is, the fraternity of the Church of God, grew and multiplied from day to day. This was especially advanced after the conference which was held a little later at Carthage by all the Catholic bishops with these same bishops of the Donatists at the command of the most glorious and devout Emperor Honorius, who, in order to bring this about, had sent the tribune and notary Marcellinus from his own court to Africa as judge. In this conference they were completely silenced, and being convicted of error by the Catholics, were reprimanded by sentence of the judge. *After their appeal* these unrighteous men were condemned as heretics by the

⁴⁰⁸ On the innovative nature of this sort of judgement for historical evidence, see especially Hermanowicz, *Possidius of Calama*, 204, note 60: 'Determination of the 'initial' accuser was alien to the law, as a number of imperial and provincial pronouncements after the age of Constantine determined the Donatists to be correct in their beliefs. Most recent law was always invested with greater authority.'

rescript of the most pious Ruler. For this reason their bishops, more than before, together with their clergy and people, enjoyed our communion, maintained the Catholic peace and endured many persecutions even to the loss of life and limb. And this good was begun and completed, as I said, by that holy man, while our fellow-bishops consented and were equally pleased. (Emphasis added.)⁴⁰⁹

All of this shows how the Donatists' request to Marcellinus for an adjudication on the matter of the *personae* at 411 established a procedural precedent for their appeal to Honorius. However, we now turn to a broader look at Augustine's anti-Donatist polemic and the legal principles which shaped his use of the Donatists' initial appeals to Constantine. It is demonstrated in what follows that the Donatists' procedural request for the identification of the Catholic party as the plaintiff also carried with it another precedent-setting possibility for the parties. Under Roman law, there were penalties for a party that initiated a claim in bad faith or requested a rescript under false pretenses.⁴¹⁰

The Donatists, no doubt, were aware of this, because it was an argument that Augustine had been making against them in his polemic for quite some time.⁴¹¹ Thus, in making their

⁴⁰⁹ Possidius, *Vita Aug.* 13 (tr. Herbert T. Weiskotten, *The Life of Saint Augustine, A Translation of the Sancti Augustini Vita by Possidius, Bishop of Calama* (Merchantville, NJ: Evolution Publishing, 2008; original edn, Princeton, NJ: Princeton University Press, 1919)), 19 (emphasis added). See also Hermanowicz, *Possidius of Calama*, and the conclusion that 'They [the Donatist envoys] must have brought a transcript of the conference with them and shown it to Honorius in hopes he would overturn Marcellinus' decision' (217).

⁴¹⁰ The scholarship on Roman law-making by rescripts is too extensive to give full attention to it in this chapter. On rescripts as law, see especially Jill Harries, *Law and Empire in Late Antiquity* (Cambridge: Cambridge University Press, 1999), 26—30; on the dismissal of rescripts, see Harries, *Law and Empire*, 30—1. See also Humfress, *Orthodoxy and the Courts*, 78—81. On the complicated precedent-setting nature of the transcript of the Conference proceedings at 411, see Hermanowicz, *Possidius of Calama*, noting, 'Pragmatic rescripts, as their names imply, were designed to deal with specific legal issues and, like the kind of rescripts called *adnotationes*, were not allowed to function as precedents in future cases. That said, the transcript of the 411 conference was considered a legal document and could certainly function as evidence in appeals' (216).

⁴¹¹ See, for example, *c. Cresc.* 3.67, and *Ep.* 93.4.13, cited more fully below.

procedural request to Marcellinus, the Donatists sought to establish the legal precedent they would need if imperial policy turned against the Catholics at some point in the future. It would allow them to claim against the Catholic party the very same things that Augustine had been claiming against them. For a better sense of the legal nature of Augustine's repeated claim that the Donatists had initiated the claim and had done so in bad faith, we turn to look at Augustine's own allegations and their context within the Roman legal principles of *calumnia* and *subreptio*.

4.5 The Place of Donatist Appeals in Augustine's Broader Claim of *Calumnia*

The allegation that the Donatists were *calumniatores* who had been punished for making a false claim against the Catholics was one that Augustine had been developing for some time. Writing to Vincentius just three years earlier, Augustine had stated:

Or ought one to petition the emperor only in order that each person might recover his own goods and not to accuse someone in order that he might be coerced by the emperor? Meanwhile, in seeking the restoration of one's own goods one departs from the example of the apostles, because none of them is found to have done this. But when your predecessors accused Caecilian, who was then bishop of the Church of Carthage, with whom they refused to be in communion as if he were a criminal, before the emperor Constantine through Anulinus, the proconsul, they were not seeking the recovery of their lost property, but were slanderously attacking an innocent man, as we view the matter and as the very outcome of the judicial proceedings reveals. What could they have done more outrageous than that? But if, as you incorrectly suppose, they handed over a man who was really a criminal to be tried by earthly authorities, why do you raise as an objection against us what your leaders first presumed to do? For we would not blame them because they did this, if they had not done it with a heart filled with hatred and bent on harm, but with the desire for improvement and correction. We, nonetheless, blame you without any hesitation because you think it a crime that

we make some complaint to a Christian emperor about the enemies of our communion, though the list of charges presented by your predecessors to Anulinus the proconsul, which were to be sent on to Constantine the emperor, was entitled as follows: ‘The Charges of the Catholic Church against the Crimes of Caecilian Submitted by the Sect of Majorinus (*Libellus Ecclesiae catholicae, criminum Caeciliani, traditus a parte Maiorini*)’. But we blame them more for this because, on their own initiative, they accused Caecilian before the emperor, whereas they ought, of course, first to have convicted him before their colleagues across the sea. The emperor himself, after all, acted in a far more orderly fashion in referring to bishops a case against bishops that was brought to him. Nor did they want to be at peace with their brothers after they were defeated. But they again came to the same emperor and again brought charges before an earthly king, not only against Caecilian, but also against the bishops assigned to them as judges. And again they appealed to the same emperor against another decision of the bishops. Nor did they think that they should yield either to the truth or to

peace when the emperor himself heard the case between both sides and pronounced judgment.⁴¹²

According to Augustine, the Donatists had been the first to appeal to Constantine, and had *calumniose* brought a claim against a party who had been proved to be innocent. It was the

⁴¹² *Ep. 93.4.13. An hoc petendum est, ut sua quisque recuperet, non ut aliquem, quo ab imperatore coerceatur, accuset? Interim et in suarum rerum recipiendarum repetitione ab apostolicis exemplis receditur, quia hoc fecisse nemo invenitur illorum. Sed tamen cum maiores vestri ipsum Caecilianum tunc Ecclesiae Carthaginensis episcopum, cui tamquam criminoso communicare noluerunt, apud principem Constantinum per Anulinum proconsulem accusaverunt; non res suas amissas repetiverunt, sed innocentem, sicut existimamus et sicut ipse iudiciorum exitus docuit, calumniose appetiverunt: quo quid sceleratius ab eis fieri potuit? Si autem, sicut falso arbitramini, vere criminosum iudicandum terrenis potestatibus tradiderunt, quid nobis obicitis quod vestrorum praesumptio primitus fecit? quod eos non argueremus quia fecerunt, si non animo invido et noxio, sed emendandi et corrigendi voluntate fecissent. Vos autem indubitanter arguimus, quibus crimen videtur de inimicis communionis nostrae christiano imperatori aliquid conqueri, cum libellus a maioribus vestris Anulino proconsuli datus, et Constantino imperatori mittendus, ita superscriptus sit: Libellus Ecclesiae catholicae, criminum Caeciliani, traditus a parte Maiorini. Illos autem magis hinc arguimus, quia cum apud Imperatorem ultro Caecilianum accusassent, quem primo utique apud collegas transmarinos convincere debuerunt, ipso Imperatore longe ordinatius agente, ut episcoporum causam ad se delatam, ad episcopos mitteret, nec victi pacem cum fratribus habere voluerunt: sed rursus ad eundem imperatorem venerunt; rursus non Caecilianum tantum, verum etiam datos sibi episcopos iudices, apud terrenum regem accusaverunt; rursus ab alio episcopali iudicio ad eundem imperatorem appellaverunt. Nec eo ipso inter partes cognoscente atque iudicante, vel veritati vel paci cedendum esse duxerunt.*

sort of claim Augustine would repeat many times in his polemic,⁴¹³ but it is worth noting its juridical as well as polemical weight. For, as Hermanowicz has commented, the making of a false rescript request to the emperor was a crime for which the penalty was immediate cancellation of the *libellus*.⁴¹⁴

⁴¹³ See, for example, a very similar claim in the *c. Cresc.*: *Nihil habetis iam unde caliginosa mendacia hominibus ignaris de rebus longe praeteritis ingeratis. Quod vestri apud Constantinum tunc imperatorem accusaverunt Caecilianum, publica monumenta proclamant. Dictam esse causam et ad debitum finem esse perductam usque ad purgationem Felicis Aptugnensis ordinitoris Caeciliani, quem in concilio Carthaginiensi malorum omnium fontem dixerunt et apud eundem Constantinum, sicut scriptis suis ipse indicat, adsiduis interpellationibus accusarunt, proconsularia testantur archiva. Resistitis reclamatis repugnatis apertissimae veritati, dicitis etiam transmarinos iudices a Caeciliano esse corruptos, ipsum imperatorem nescio qua gratia depravatum; eo quippe est impudentior victus accusator quo fit etiam iudicis calumniator. Verumtamen inter omnia illa vestra mendacia, quibus transmarinis iudicibus calumniamini, saltem hoc optinemus, quod primi maiores vestri ad imperatorem causam istam detulerunt, primi apud imperatorem Caecilianum et eius ordinatorem accusaverunt, primi apud imperatorem Caecilianum et eius socios persecuti sunt. Unde nobis, sicut vobis videtur, gravissimam concitatis invidiam, quia victi patimini quod victores utique faceretis, velut si Danihelem criminari vellent, qui illo innocente liberato ipsi ab eis leonibus consumpti sunt, a quibus eum per calumniam consumi voluerunt. Obtinemus etiam, quodlibet de iudicibus, <a quibus> praesens iudicio transmarino absolutus est Caecilianus, quodlibet de ipso, apud quem maiores vestri Caecilianum accusaverunt, cuius postremo iudicium episcopali praelatum iudicio delegerunt, Constantino imperatore tamquam corrupto gratia sive sentiatis sive fingatis, omnes tamen, qui tunc erant vel in propinquis vel in remotis terris tam longe lateque diffusi catholici christiani, ad quos fama de Caeciliano et collegis eius potuit pervenire, non debuisse accusatoribus victis, sed ecclesiasticis iudicibus credere. Ubi enim iudices omnes esse non possumus, melius his qui esse potuerint credimus quam credendo litigatoribus victis, quorum esse iudices non potuimus, de ipsis iudicare iudicibus audeamus (c. Cresc. 3.67).*

⁴¹⁴ See also, Hermanowicz, *Possidius of Calama*, 215, noting that ‘The technical term for the illegal solicitation of law was *subreptio*, and in his rescript, Honorius declares it was the Donatists who were guilty of this infraction, having deliberately misunderstood his previous *oraculum* to their undeserving benefit.’ Cf. Honorius’ letter to Marcellinus and the phrase, ‘*Nunc quoque excludendam subreptionem simili auctoritate censemus*’ (*Gesta conlationis Carthaginiensis*, 1.3, 4. It is unclear when *subreptio* first began to be used as a technical legal principle, but it appears to be a principle first clearly stated in medieval canon law. However, the principle of *calumnia* is well attested and appears to be the legal basis of Augustine’s categorization of the Donatists as *calumniatores*.

The same concept is found in the Roman legal principle of *calumnia*.⁴¹⁵ When the Donatists asked for an adjudication from Marcellinus at 411, it was a clever juridical move. They asked for him to take notice of something everyone had known: that the Catholic party in the summer of 410 had been the first to appeal to Honorius for the Conference. In doing so, they also implicitly asked for an adjudication that would carry more weight in the ongoing Catholic—Donatist polemics. In the event that the Catholic party was later the losing party in this long-standing lawsuit, the punishments to be meted out to the Catholics would take the same shape that Augustine had given them: just punishments for *calumniatores*.

Writing to Boniface seven years later in 418, Augustine makes much of the fact that the Donatists had been the first to bring the matter to the attention of Constantine. He says:

I add the fact that by their accusations they themselves referred the case of Caecilian to the judgment of Emperor Constantine. In fact, after the episcopal tribunals, in which they were not able to defeat Caecilian, they brought Caecilian himself, by their most persistent prosecution, to be examined by the aforementioned emperor. And now, in order to deceive the ignorant, they blame in us what they did first, when they say that Christians ought not to ask for anything from Christian emperors against the enemies of Christ.⁴¹⁶

⁴¹⁵ Of course, the allegation of mendacity is repeated many times in the Donatist—Catholic controversy, but this strategy of alleging that the other side is untruthful is on full display at the Conference of 411. See also Hermanowicz, *Possidius of Calama*, noting the following seven separate instances in which the Donatists themselves accused the Catholics of lying at the Conference of 411: *Gesta conlationis Carthaginensis*, 1.14; 3.65; 3.67; 3.75; 3.89; 3.138; 3.163 (214).

⁴¹⁶ *Ep.* 185.2.6 (tr. Teske, *Letters 156 – 210*, 182); *Addo quod Caeciliani causam, ipsi ad imperatoris Constantini iudicium accusando miserunt; imo vero ipsum Caecilianum post episcopalia iudicia, ubi eum opprimere non potuerunt, ad supradicti imperatoris examen, pertinacissimis persecutoribus perduxerunt. Et quod in nobis modo reprehendunt, ut decipiant imperitos, dicentes non debere christianos contra inimicos Christi aliquid a christianis imperatoribus postulare, ipsi priores fecerunt.*

Interestingly, he also reports that the Donatists were unable to contest this and even boasted about it at the Conference of 411.

They did not dare to deny this in the conference that we held together at Carthage; in fact, they dared to boast that their predecessors brought criminal charges against Caecilian before the emperor, adding, moreover, the lie that they won their case there and caused him to be condemned. How, then, are they not persecutors who, when they persecuted Caecilian by their accusations and lost to him, chose to claim for themselves false glory by a most impudent lie? For they not only thought it no sin if they were able to prove that Caecilian was condemned by means of their predecessors' accusations, but they even boasted of it in praise of themselves. Since the proceedings are very lengthy, especially for you who are occupied with other matters requisite for the Roman peace, it would take a great deal of time to read how the Donatists were defeated in every way at the conference itself, but you could perhaps read a synopsis of them, which I believe my brother and fellow bishop Optatus has, or, if he does not have it, it could easily be obtained from the church of Sitifis, since this book too is perhaps burdensome for a man with your concerns because of its length.⁴¹⁷

This allowed Augustine to re-enforce his claim to Boniface that the Donatists:

⁴¹⁷ *Ep. 185.2.6* (tr. Teske, *Letters 156 – 210*, 182—3); *Quod etiam in collatione quam simul apud Carthaginem habuimus, negare non ausi sunt: imo et gloriari ausi sunt quod apud Imperatorem maiores eorum criminaliter Caecilianum fuerint insecuti; insuper addentes mendacium, quod eum illic vicerint fecerintque damnari. Quomodo ergo ipsi non sunt persecutores, qui cum accusando persecuti sint Caecilianum, et ab eo fuerint superati, falsam sibi gloriam impudentissimo mendacio arrogare voluerunt; non solum culpam non putantes, verum etiam pro sua laude iactantes, si probarent Caecilianum maioribus suis accusantibus fuisse damnatum? Quemadmodum autem in ipsa collatione modis omnibus victi sint, quoniam valde prolixa sunt Gesta, et tibi aliis rebus Romanae paci necessariis occupato, multum est ut legantur, Breviarium eorum tibi legi forsitan poterit, quod credo habere fratrem et coepiscopum meum Optatum; aut si non habet, potest facillime accipere de Ecclesia Sitifensi: quando quidem etiam liber iste iam sua prolixitate curis tuis forsitan onerosus est.*

boast of being persecuted because they are forbidden to do these actions by the laws of the emperors, which they established for the sake of the unity of Christ, while the Donatists deceitfully boast of their own innocence and seek from human beings the glory of martyrs, a glory they cannot receive from the Lord.⁴¹⁸

We conclude this chapter with a look at Augustine's *Homily 7 on the Gospel of John* in which his specific knowledge of this style of legal argument becomes apparent. In this homily, Augustine is preaching on the Lord's Prayer to his congregation. Although the precise dating of

⁴¹⁸ Augustine, *Ep.* 185.2.8 (tr. Teske, *Letters 156 – 210*, 184); ... *et de persecutione gloriantur; quia prohibentur ista facere legibus imperatorum, quas constituerunt pro unitate Christi; et iactant fallaciter innocentiam suam, et quam non possunt a Domino accipere, ab hominibus quaerunt martyrum gloriam.*

this homily is uncertain, earlier in the same homily he seems to have made reference to the laws imposed against the Donatists.⁴¹⁹

He tells his congregation that they must ask to be forgiven their debts as they forgive their debtors. But, he sternly warns his congregation not to lie to God when they claim that they forgive their debtors, because God will know. He notes that making such a request is like presenting a rescript request to an emperor, and that it is a process fraught with peril. The relevant passage from Augustine's homily reads:

You see, people who have cases about which they wish to petition the emperor first look for some scholar learned in the law to compose their petitions for them, in case by presenting them otherwise than in the proper form they should, perhaps, not merely fail to obtain what they were asking for, but should receive a penalty in place of a favor. So then, when the apostles sought to present

⁴¹⁹ The dating of *In Jn. tract.* has been the object of much discussion, summarized by Alan Fitzgerald in Augustine, *Homilies on the Gospel of John 1—40*, tr. Edmund Hill with introduction by Alan Fitzgerald, *The Works of Saint Augustine, A Translation for the 21st Century*, I/12 (Hyde Park, NY: New City Press, 2009), 25—8. Fitzgerald can say elsewhere apodictically, 'There is agreement that tractates 1—16 were preached in the winter of 406/7 ...' (Fitzgerald, '*Johannis evangelium tractatus, In*', in Fitzgerald, *Augustine through the Ages*, 474—5, at 474, following the dating of A.-M. La Bonnardière, *Recherches de chronologie augustienne* (Paris: Études augustiniennes, 1965), 46—51, and M.-F. Berrouard, 'La date des *Tractatus I—LIV in Johannis Evangelium* de Saint Augustin', *Rec Aug* 7 (1971): 105—68. The apparent references to imperial legislation against the Donatists make it likely that it was preached after 405. See, for example, *In Jn. tract.* 7.6 (tr. Hill, *Homilies on the Gospel of John 1—40*, 149): 'And it is a great thing to see it everywhere in the world: the lion conquered by the blood of the Lamb, the members of Christ being snatched from the teeth of lions and joined to the body of Christ.' See also 7.12 (tr. Hill, 156): 'So, then, how do you know that God does not want to cure you? It is still to your advantage to be punished. Do you really know how septic the sore is which the doctor is lancing, pushing the steel through the putrescence? Does he not know the limit of what he should do, know how far he should go with it? Do the wails of the one being cut restrain the hand of the doctor cutting so skillfully? One yells, the other cuts. Is he being cruel by not listening to the yells, or not rather being kind by continuing to attack the wound in order to heal the patient? The reason I have said all this, my brothers and sisters, is that none of us should go looking for anything apart from God's help, whenever we happen to be corrected by the Lord. Watch out lest you perish, watch out lest you drift away from the Lamb and get devoured by the lion.'

their petitions, and could not figure out how to approach the sovereign God, they said to Christ, *Lord, teach us how to pray* (Lk 11: 1); that is, ‘As our counsel, court assessor, or better, the one who shares the bench with God, compose our petitions for us.’ And the Lord taught them from the heavenly law book, taught them how they should pray; and in what he taught he put a certain condition: *Forgive us our debts, as we too forgive our debtors* (Mt 6: 12).

If you do not ask in accordance with the law, you will be guilty. Are you trembling with dread of the emperor, on being found guilty? Offer the sacrifice of humility, offer the sacrifice of mercy, say in the petition, ‘Forgive me, since I too forgive.’ But if you say it, do it. What, I mean to say, are you going to do, where are you going to go, if you have lied in the prayers? It is not simply, as they say in the law courts, that you will be deprived of the benefit of your rescript (*beneficio rescripti*). For common law is that anyone who makes a false statement in his petition should not profit from the rescript he has obtained. But that is the case among human beings, because human beings can be deceived. The emperor could have been deceived when you sent your petition; I mean you said what you wanted to, and the one you said it to does not know whether it is true. So he has sent you back to your opponent to establish the truth, so that if you are convicted before a judge of lying – because the emperor, not knowing whether you had lied, could not but grant your petition – you will be deprived of the benefit of the rescript in the place where you sought enforcement. God, however, knows whether you are lying or telling the truth, so he does not arrange for you not to

profit from the rescript in the court; he simply does not permit you to obtain anything, because you dared to lie to Truth.⁴²⁰

It is likely that Augustine had the Donatists in mind in this section of the homily, for there are allusions to the imperial laws against the Donatists before and after this passage.⁴²¹ He certainly addresses his disputes with the Donatists in others of these same homilies.⁴²² But for our purposes, what matters is Augustine's awareness of a specific legal device that penalized a

⁴²⁰ Augustine, *In Jn. tract.* 7.11 (tr. Hill, *Homilies on the Gospel of John* 1—40, 154—5); *Qui enim habent causam, et volunt supplicare imperatori, quaerunt aliquem scholasticum iurisperitum, a quo sibi preces componantur; ne forte si aliter petierint quam oportet, non solum non impetrent quod petunt, sed et poenam pro beneficio consequantur. Cum ergo quaererent supplicare Apostoli, et non invenirent quomodo adirent imperatorem Deum, dixerunt Christo: Domine, doce nos orare: hoc est: Iurisperite noster, assessor, imo consessor Dei, compone nobis preces. Et docuit Dominus de libro iuris coelestis, docuit quomodo orarent: et in ipso quod docuit, posuit quamdam conditionem: Dimitte nobis debita nostra, sicut et nos dimittimus debitoribus nostris. Si non secundum legem petieris, reus eris. Contremiscis imperatorem factus reus? offer sacrificium humilitatis, offer sacrificium misericordiae, dic in precibus: Dimitte mihi, quoniam et ego dimitto. Sed si dicis, fac. Quid enim facturus es, quo iturus es, si mentitus fueris in precibus? Non quomodo dicitur in foro, carebis beneficio rescripti; sed nec rescriptum impetrabis. Iuris enim forensis est ut qui in precibus mentitus fuerit, non illi prosit quod impetravit. Sed hoc inter homines, quia potest falli homo; potuit falli imperator, quando preces misisti: dixisti enim quod voluisti, et cui dixisti, nescit an verum sit; dimisit te adversario tuo convincendum, ut si ante iudicem convictus fueris de mendacio, quia non potuit ille nisi praestare, nesciens an fueris mentitus, ibi carebis ipso beneficio rescripti, quo perduxisti rescriptum. Deus autem qui novit utrum mentiaris, an verum dicas, non facit ut in iudicio tibi non prosit; sed nec impetrare te permittit, quia ausus es mentiri veritati.* This passage is cited in Humfress, *Orthodoxy and the Courts*, for evidence of the importance of consulting a *iurisperitus* when petitioning the emperor (77—9). For further discussion of the denial of rescript requests containing factual errors, see Humfress, *Orthodoxy and the Courts*, 80—1.

⁴²¹ Cf. *In Jn. tract.* 7.6, and 7.11, cited above.

⁴²² As just one example, see *In Jn. tract.* 4.16: *Fratres, ista quaestio si hodie solvatur, gravat vos, non dubito, quia iam multa dicta sunt. Sciatis autem talem istam quaestionem esse, ut haec sola perimat partem Donati. Ad hoc dixi Caritati vestrae, ut intentos vos facerem, similiter ut soleo; simul ut oretis pro nobis et vobis, ut et nobis det Dominus digna loqui, et vos digna capere mereamini. Interim hodie dignamini differre.* For a fuller discussion of Augustine's arguments against the Donatists in these homilies, see Rettig's introduction in Augustine, *Tractates on the Gospel of John*, 1—10, tr. John W. Rettig, *Fathers of the Church* 78 (Washington: Catholic University of America Press, 1988), 16—19.

party for bringing a claim in bad faith – which demonstrates why Augustine repeatedly returns to this line of argument against the Donatists, because the law at hand penalized those parties who had requested aid from the emperor in bad faith.

Here we have a fitting account of Augustine's legal strategy against the Donatists in 411. It was a strategy in which Augustine argued that the penalties the Donatists were receiving were not the result of Catholic persecution, but were the inexorable legal consequences of the Donatists' own appeals to the emperor.⁴²³ So, in Augustine's telling, the Donatists had initiated the case, they had lied in the process, and now rather than receiving the '*beneficio rescripti*', they were receiving the punishment for that false *libellus* under Roman law. Moreover, as we have seen, Augustine was careful not to allow the Donatists to turn his own strategy against him, and was able to use the story about an appeal to the emperor by Donatists in 406 to thwart their procedural maneuvers requesting the identification of *personae* at Carthage in 411 – all of which was part of Augustine's juridical strategy of rewriting the Donatists' history and recasting them from the party of the pure to a party of failed persecutors receiving their just punishments under the law. It is not a sympathetic account of the Donatist Church, but it is the story Augustine told, and this chapter has demonstrated the legal devices at Augustine's disposal for carrying it to fruition. It has also been shown that Augustine had specific knowledge of these legal principles and used them against the Donatists as one of the Catholic party's advocates. In chapter five, we turn to the final aspect of Augustine's juridical use of the Donatist appeals: his argument that the Donatists be classified as heretics pursuant to the imperial legislation of 392.

⁴²³ For an interesting study of Augustine's broader line of argument that it is not the penalty but the cause that makes a martyr (*cum martyrem non faciat poena sed causa*, *Ep.* 204.4), see Adam Ployd, '*Non poena sed causa*: Augustine's Anti-Donatist Rhetoric of Martyrdom', *AugStud* 49.1 (2018): 25–44. Augustine's theological critique of Donatist martyrdom, as shown by Ployd, is consistent with this chapter's demonstration of the extent to which Augustine argued that the punishments received by the Donatists were brought upon them by their false allegations in the initial appeal to Constantine.

CHAPTER FIVE: A THEODOSIAN THEOLOGY OF SCHISM: THE PLACE OF THE DONATISTS' APPEALS IN AUGUSTINE'S JUSTIFICATION FOR COERCION

Chapter five carries forward the evidence examined in chapter two for the Donatist appeals to North African imperial officials during the period of Gildo's attempted usurpation (397/398). After first examining certain of Augustine's most important theological precedents for categorizing schism and heresy as either interrelated or clearly distinguishable terms, we then turn our attention to Augustine's polemical use of the juridical precedents set by the Donatists' appeals against their own schismatic Maximianists during the mid-late 390s. More particularly, we turn to the *contra Cresconium* from 405/406, where Augustine's reliance on the Donatists' legal precedent of categorizing schism as heresy is fully articulated and Augustine's theological arguments for the coercion of the Donatists are defended on the basis of his prior juridical categorization of the Donatists as heretics by virtue of being members of an inveterate schism (*schisma inveteratum* (c. *Cresc.* 2.7)).

Moreover, this chapter also shows how Augustine's theological arguments against Cresconius on schism and heresy were closely aligned with the recent legal justifications for coercion of the Donatist schismatics set out in the imperial anti-Donatist legislation of 405 (especially *CTh.* 16.6.4). Thus, refining a point in Frend's work, who saw in Augustine's allegation of inveterate schism 'the view of a bureaucrat',⁴²⁴ it is argued that Augustine's categorization of the Donatist schism as a heresy was a juridical determination made in terms that closely followed the controlling judicial rationale for the coercion of heretics long established in the imperial anti-heresy legislation of 392 (*CTh.* 16.5.21) as it had been interpreted and applied by Donatist advocates in their own appeals to have that same legislation imposed against their own schismatics. We also see that Augustine's ambiguous theological identification of inveterate schism with heresy in the *contra Cresconium* departed from the clear theological distinctions drawn between the two categories by the Catholic advocate Optatus and by Basil of Caesarea and returned to earlier theological ambiguity on the distinctions between schism and

⁴²⁴ Frend, *Donatist Church*, 267—8.

heresy evident in the work of earlier Christian writers such as Cyprian and the Donatist bishop Parmenian.

It is shown that Augustine's decision to characterize inveterate schism as heresy was largely a juridical determination undergirded by his careful study of imperial anti-heresy legislation and the Donatists' own legal strategy of arguing for a theological equivalency between schism with heresy in order to bring to bear anti-heresy legislation of 392 against their own schismatics. *Contra* Erika Hermanowicz's recent assessment of Augustine's identification of inveterate schism with heresy as something new,⁴²⁵ it is shown that Augustine's recategorization of the Donatist schismatics as heretics is actually better understood as a return to an earlier Christian understanding of schism and heresy – one which had been held by the Donatists themselves until the anti-Donatist legislation of 405. Moreover, *pace* Brown and Lamirande among others who have argued for understanding Augustine's posture on coercion from the interpretive standpoint of a change of mind in the early 400s about the moral permissibility of coercion, this chapter demonstrates how the imperial anti-heresy legislation of 392 (*CTh.* 16.5.21) had already shaped and organized the contours of Augustine's posture on the coercion by the early- to mid-390s, as can be seen in his first extant anti-Donatist work of 392 (*Ep.* 23) and in his letter to Alypius of 395 (*Ep.* 29).

⁴²⁵ Hermanowicz, *Possidius of Calama*, 130.

5.1 The Evidence for Augustine's Use of the Donatists' Appeals in His Identification of Schism with Heresy

Augustine's juridical justification for coercion of the Donatists on the basis of their own legal arguments for the coercion of the Maximianist schismatics is set out most clearly in the *contra Cresconium*. The focus of this chapter will be on Augustine's reliance on this Donatist legal precedent in the *contra Cresconium*. Certain other texts will also be examined in order to establish the background for Augustine's determination that the Donatists were heretics as members of an inveterate schism (*c. Cresc.* 2.7). In particular, select writings on schism and heresy from Tertullian,⁴²⁶ Cyprian,⁴²⁷ Optatus,⁴²⁸ Parmenian,⁴²⁹ Basil,⁴³⁰ and Cresconius⁴³¹ will be examined, along with the precise language of the imperial anti-heresy legislation of 392 (*CTh.* 16.5.21) and anti-Donatist legislation of 405 (especially *CTh.* 16.6.4). Two of Augustine's letters (*Ep.* 23 and *Ep.* 29) will also be examined to demonstrate the influence of the legislation of 392 on Augustine's early anti-Donatist polemic.

5.2 Augustine's Precedents for Identifying Schism with Heresy

As we will see, Augustine's primary justification for the coercion of the Donatists was premised upon a juridical determination that the Donatists were heretics as members of an inveterate schism. In order to make this legal determination, Augustine needed to argue that certain types of schism might become heresies and thus subject to the imperial anti-heresy laws of 392 and 405. In discussing Augustine's argument in this respect, Erika Hermanowicz has observed that 'this is

⁴²⁶ Tertullian, *De praescriptione haereticorum*.

⁴²⁷ Cyprian, *De ecclesiae catholicae unitate* and *Ep.* 48.

⁴²⁸ Optatus, *Against the Donatists* (*c. Parmenianum Donatistam*).

⁴²⁹ Text no longer extant. Cited in Optatus, *Against the Donatists*.

⁴³⁰ Basil, *Ep.* 188.

⁴³¹ Text no longer extant. Cited in Augustine, *contra Cresconium*.

new'.⁴³² The argument of this chapter is that Augustine's argument for legally categorizing certain types of schisms as heresies was not entirely new, but rather was a juridical tactic that he gleaned from his study of the Donatist appeals to imperial officials in the 390s. Given the limitation in the temporal scope of Hermanowicz's book to the 390s and early 400s, her analysis of Augustine's treatment of schism and heresy overlooks the extent to which the early Church had long treated these categories in an ambiguous and closely related manner and the two terms had only recently begun to be distinguished by Optatus and Basil. Hermanowicz's analysis of this argument of Augustine's as a new development also overlooks the extent to which the Donatist bishop Parmenian had argued for a close relationship between the two concepts and how that theological ambiguity was then put to use by Donatist advocates who appealed for the coercion of their own schismatics under the imperial anti-heresy law of 392. Accordingly, we must briefly turn our attention to certain select instances in which early Christian writers addressed the terms 'schism' and 'heresy'.

The literature on the subject is vast and defies easy categorization. Fortunately, the work of Geoffrey Dunn on schism and heresy in the writings of Cyprian has already gone a long way towards helpfully summarizing and analyzing the broad contours of the early Church's understanding of schism and heresy up to and including Cyprian's time.⁴³³ In this section we will explore only certain select writings of Tertullian, Cyprian, Optatus, Parmenian, Basil, and Cresconius. The goal in conducting this examination of these select writings is not to enter into ongoing scholarly arguments about the early Church's perspective on every aspect of schism and

⁴³² Hermanowicz, *Possidius of Calama*, 130. 'In response to Cresconius, Augustine argued that it was not a matter of intellect or theology, but intractability over time: "heresy is inveterate schism" ("haeresis autem schisma inveteratum", c. *Cresc.* 2.7 [9]). Schism and heresy both arose out of disagreement among Church members. The substance of that disagreement did not determine which category one belonged [*sic*], but the stubbornness with which one held on to mistaken ideas. All schism, every split within the Church, became heresy if it continued for too long. This is new.'

⁴³³ Dunn, 'Heresy and Schism'.

heresy, as Geoffrey Dunn,⁴³⁴ Rowan Williams⁴³⁵ and Gerald Bonner⁴³⁶ have already done at some length.⁴³⁷ Rather, the purpose of this examination is to show in these selected texts from early Christian writers the controlling theological precedents for treating schism and heresy either as interrelated terms or as clearly separate categories. It is shown in what follows that the early Church tended to treat schism and heresy as interchangeable categories, but that later in the fourth century the Catholic writers Optatus and Basil both argued for clear distinctions between the two.

The following overview is in order to show that at key points Augustine was departing from Optatus and Basil and returning to the Donatists' and the early Church's own theological ambiguity on schism and heresy when he finally articulated his own mature justification for coercion on the basis that the Donatists had become heretics as members of an inveterate schism (*c. Cresc.* 2.7).

⁴³⁴ *Ibid.*

⁴³⁵ Rowan Williams, 'Defining Heresy', in Alan Kreider (ed.), *The Origins of Christendom in the West* (Edinburgh: T&T Clark, 2001), 324—7.

⁴³⁶ Gerald Bonner, '*Dic Christi Veritas Ubi Nunc Habitas*: Ideas of Schism and Heresy in the Post-Nicene Age', in William E. Klingshirn and Mark Vessey (eds), *The Limits of Ancient Christianity: Essays on Late Antique Thought and Culture Culture in Honor of R.A. Markus* (Ann Arbor: University of Michigan Press, 1999), 63—79.

⁴³⁷ See also Mark Edwards, *Catholicity and Heresy in the Early Church* (Farnham, Surrey: Ashgate, 2009); Tilley, 'When Schism Becomes Heresy'; Ployd, *Augustine, the Trinity, and the Church*.

Tertullian on Schism and Heresy

The early Church's treatment of the relationship between schism and heresy since the Apostle Paul's statements in passages such as 1 Corinthians 11: 18—19⁴³⁸ and Galatians 5:20⁴³⁹ treated the two terms as almost synonymous and typically reflected what Geoffrey Dunn has described as 'the lack of precision' in these texts.⁴⁴⁰ Tertullian is an excellent example of this imprecision on schism and heresy in the early Church. Of course, Tertullian is also a complicated figure in his own right, and his writings on schism and heresy defy easy categorization.⁴⁴¹ What follows is not an attempt to examine every one of Tertullian's usages of the word '*haeresis*' nor every usage of the word *schisma*. Rather, the following passages are exemplary of Tertullian's interchangeable treatment of the two terms, demonstrating the truth of Dunn's helpful assessment that 'It would seem that for Tertullian any division in the community, whether created by divergent beliefs or practices, could be called *haeresis*.'⁴⁴²

Writing in *De praescriptione haereticorum*, Tertullian described heresies as follows:

Let us rather be mindful both of the statements of the Lord and of the Apostolic Letters which foretold to us that heresies should be, and enjoined that they should be avoided; and as we are not dumbfounded at their existence, so let us not

⁴³⁸ 1 Cor. 11: 18 — 19: 'For, to begin with, when you come together as a church, I hear that there are divisions among you; and to some extent I believe it. Indeed, there have to be factions among you, for only so will it become clear who among you are genuine' (NRSV); *πρῶτον μὲν γὰρ συνερχομένων ὑμῶν ἐν ἐκκλησίᾳ ἀκούω σχίσματα ἐν ὑμῖν ὑπάρχειν, καὶ μέρος τι πιστεύω. δεῖ γὰρ καὶ αἵρέσεις ἐν ὑμῖν εἶναι, ἵνα καὶ οἱ δόκιμοι φανεροὶ γένωνται ἐν ὑμῖν.*

⁴³⁹ Galatians 5: 20. In this passage Paul condemns 'idolatry, sorcery, enmities, strife, jealousy, anger, quarrels, dissensions, factions' (NRSV); *εἰδωλολατρία, φαρμακεία, ἔχθραι, ἔρις, ζῆλος, θυμοί, ἐριθείαι, διχοστασίαι, αἵρέσεις.*

⁴⁴⁰ Dunn, 'Heresy and Schism', 555.

⁴⁴¹ One of the best studies on Tertullian remains T.D. Barnes, *Tertullian: A Historical and Literary Study* (Oxford: Clarendon Press, 1971). For a more detailed overview of Cyprian's writings on schism and heresy, see Dunn, 'Heresy and Schism', 554—7.

⁴⁴² Dunn, 'Heresy and Schism', 555.

wonder that they possess that power which makes it necessary for them to be avoided.

The Lord taught that many ravening wolves would come in sheep's clothing. And what is sheep's clothing but the outward profession of the Christian name? What are the ravening wolves but crafty intentions and dispositions lurking within to molest the flock of Christ? Who are false prophets but false preachers? Who are false Apostles but spurious evangelizers? Who are the Antichrists now and ever but the rebels against Christ? *There are, through wilfulness of teachings, heresies assailing the Church; at the present time no less than in the future will Antichrist attack her by cruelty of persecutions*, only there is this difference: persecution makes martyrs, heresy only apostates. And therefore it was necessary that there should be heresies, in order that those who are approved might be made manifest – meaning both those who shall have stood fast in times of persecution and those who shall not have strayed away to heresies. For the Apostle does not wish those to be accounted approved who change the Faith into heresy; as they perversely interpret his words in their own favour, because he said in another place, ‘Prove all things, hold fast that which is

good.’ As if it were not possible after proving all things amiss to fasten through error upon the choice of some evil.⁴⁴³

Here we see an interesting instance of heresies being described as an evil that will rend the church, an attribute also commonly given to schism. Later on in the next chapter of the same work, Tertullian reflects on Paul’s treatment of schism and heresy as follows:

Besides, when he rebukes dissensions and schisms which are undoubted evils, he immediately adds ‘heresies’ also. That which he adjoins to evil things he assuredly confesses to be an evil, and indeed a greater evil, since he says he believed concerning their dissensions and schisms, because he knew that heresies moreover must be. He showed that in view of the greater evil he easily believed about the lighter evils: certainly not meaning that he thus believed concerning the evils, because heresies were good, but to forewarn them not to marvel about temptations of a worse character, which, he asserted, tended to make manifest

⁴⁴³ Tertullian, *De praescriptione haereticorum*, 4 (tr. Bindley (Tertullian, *On the Testimony of the Soul and On the ‘Prescription’ of Heretics*, tr. T. Herbert Bindley (London: Society for Promoting Christian Knowledge, 1914), 40—1; emphasis added). (4.1) *Quin potius memores simus tam dominicarum pronuntiationum quam apostolicarum litterarum, quae nobis et futuras haereses praenuntiarunt et fugiendas praefinierunt et, sicut esse illas non expauescimus, ita et posse id propter quod effugiendae sunt, non miremur.* (2) *Instruit Dominus multos esse uenturos sub pellibus ouium rapaces lupos.* (3) *Quaenam istae sunt pelles ouium nisi nominis christiani extrinsecus superficies? Qui lupi rapaces nisi sensus et spiritus subdoli, ad infestandum gregem Christi intrinsecus delitescentes?* (4) *Qui pseudoprophetae sunt nisi falsi praedicatores? Qui pseudoapostoli, nisi adulteri euangelizatores? Qui antichristi, interim et semper, nisi Christi rebelles?* (5) *Hoc erunt haereses, non minus nouarum doctrinarum peruersitate ecclesiam lacescentes, quam tunc antichristus persecutionum atrocitate persequetur nisi quod persecutio et martyras facit, haeresis apostatas tantum.* (6) *Et ideo haereses quoque oportebat esse, ut probabiles quique manifestarentur, tam qui in persecutionibus steterint quam qui ad haereses non exorbitauerint.* (7) *Neque enim eos probabiles intelligi iubet qui in haeresim fidem demutant, sicut ex diuerso sibi interpretantur quia dixit alibi: omnia examine, quod bonum est tenete. Quasi non liceat omnibus male examinatis in electionem alicuius mali impingere per errorem* (Tertullien, *Traité de la prescription contre les hérétiques*, ed. and tr. R.F. Refoulé, SCh 46 (Paris: du Cerf, 1957).

those who were approved, that is, those whom heresies could not pervert. Similarly, since the whole section savours of the preservation of unity and the restraint of divisions, whilst heresies divorce from unity no less than schisms and dissensions, undoubtedly he includes heresies in that same category of blame in which he also places schisms and dissensions; and hence he does make those to be approved who have turned aside to heresies, since he pointedly exhorts men to turn away from such, and teaches all to speak one thing and to be minded the selfsame way – an ideal which heresy does not allow.⁴⁴⁴

In this passage, Tertullian describes heresy and schism in an overlapping and yet still somehow distinguishable manner, and attributes the same attitude about them to the Apostle Paul. He goes on to comment on the Apostle Paul's treatment of heresy:

We need not dwell longer on this point, since it is the same Paul who also in another place, when writing to the Galatians, classes heresies among carnal sins, and who warns Titus that a man that is an heretic must be avoided after the first admonition, because he that is such has become perverted and sins, being self-condemned. Moreover, also in nearly every Epistle, when enjoining the necessity of fleeing false doctrines, he indicates heresies. For false doctrines are the

⁴⁴⁴ Tertullian, *De praescriptione haereticorum*, 5 (tr. Bindley, 41—2). (5.1) *Porro si dissensiones et schismata increpat quae sine dubio mala sunt, et in continenti haereses subiungit, (2) quod malis adiungat, malum utique profitetur et quidem maius cum ideo credidisse se dicat de schismatibus et dissensionibus quia sciret etiam haereses oportere esse. (3) Ostendit enim grauioris mali conspectu de leuioribus se facile credidisse; certe non ut ideo de malis crediderit quia haereses bonae essent, sed uti de peioris quoque notae temptationibus praemoneret non esse mirandum quas diceret tendere ad probabiles quosque manifestandos, scilicet quos non potuerit deprauare. (4) Denique si totum capitulum ad unitatem continendam et separationes coercendas sapit, haereses uero non minus ab unitate diuellunt quam schismata et dissensiones. Sine dubio et haereses in ea condicione reprehensionis constituit in qua et schismata et dissensiones. (5) Et per hoc non eos probabiles facit qui in haereses diuerterint, cum maxime diuertere ab eiusmodi obiurget edocens unum omnes loqui et ipsum sapere, quod etiam haereses non sinunt* (Refoulé).

production of heresies: heresies being so-called from a Greek word which signifies the ‘choice’ which any one makes when introducing or adopting them. And it is for this reason that he calls a heretic self-condemned, because he chose for himself that wherein he is condemned. For us, however, it is not lawful to introduce anything on our own authority, nor to choose that which any one else has similarly introduced. We have the Apostles of the Lord as our authorities, who not even themselves chose to introduce anything on their own authority, but faithfully handed on to the nations the rule received from Christ. Consequently, if even an angel from heaven preached otherwise, he would be called anathema by us. Already at that time had the Holy Spirit perceived that there would be an angel of deceit in a certain virgin Philumena, transforming himself into an angel of light; by whose signs and deceptions Apelles, being led away, introduced a new heresy.⁴⁴⁵

Examples such as these could be multiplied, as could discussions of Tertullian’s own alleged status as a schismatic late in life, but such would distract us from the focus of this chapter. The key point to be gleaned from this brief examination of selections from Tertullian’s writings on schism and heresy was stated well by Dunn when he noted about Tertullian that, ‘The

⁴⁴⁵ Tertullian, *De praescriptione haereticorum*, 6 (tr. Bindley, 42—3). (6.1) *Nec diutius de isto si idem est Paulus qui et alibi haereses inter carnalia crimina enumerat scribens ad Galatas et qui Tito suggerit hominem haereticum post primam correptionem recusandum quod peruersus sit eiusmodi et delinquat ut a semetipso damnatus.* (2) *Sed et in omni paene epistula de adulterinis doctrinis fugiendis inculcans haereses taxat quarum opera sunt adulterae doctrinae: haereses dictae graeca uoce ex interpretatione electionis qua quis maxime siue ad instituendas siue ad suscipiendas eas utitur.* (3) *Ideo et sibi damnatum dixit haereticum quia et in quo damnatur sibi elegit. Nobis uero nihil ex nostro arbitrio inducere licet sed nec eligere quod aliquis de arbitrio suo induxerit.* (4) *Apostolos Domini habemus auctores qui nec ipsi quicquam ex suo arbitrio quod inducerent, elegerunt, sed acceptam a Christo disciplinam fideliter nationibus adsignauerunt.* (5) *Itaque etiamsi angelus de caelis aliter euangelizaret, anathema diceretur a nobis.* (6) *Prouiderat iam tunc Spiritus sanctus futurum in uirgine quadam Philumene angelum seductionis transfigurantem se in angelum lucis, cuius signis et praestigiis Apelles inductus nouam haeresin induxit* (Refoulé).

most we can say is that *haeresis* was used to refer to deviations in both belief and practice, and that *schisma* was a much less frequently used term which was not clearly defined and which, although it overlapped with *haeresis*, was distinguishable somehow. It contained the idea of splintering groups.⁴⁴⁶ The same theological ambiguity would persist in the writings of Tertullian's fellow North African Cyprian of Carthage. We now turn our attention to Cyprian's writings on schism and heresy.

Cyprian on Schism and Heresy

The theological importance of Cyprian for all parties in the Donatist controversy cannot be overstated. However, this study has been focused on the legal aspects of the controversy and accordingly has not directed its attention to the importance of Cyprian's theological writings on such topics as rebaptism, forgiveness for the *lapsi*, and martyrdom.⁴⁴⁷ Nevertheless, we briefly turn our attention to Cyprian because, on the matter of schism and heresy, his ambiguity about the two terms would be followed by the Donatist bishop Parmenian, and indeed by Augustine himself.

We first look at Cyprian's *De ecclesiae catholicae unitate*, which was written around the year 251 in the context of the divisions emerging at Rome and Carthage over responses to the Decian persecution.⁴⁴⁸ In this work, Cyprian says concerning schism and heresy:

Here we are given an example how to break company with the 'old man', how to follow in the steps of Christ to victory, so that we may not carelessly stumble

⁴⁴⁶ Dunn, 'Heresy and Schism', 557.

⁴⁴⁷ For one important treatment of Cyprian's place in the Donatist controversy, see Frend, *Donatist Church*, 125—40.

⁴⁴⁸ The complex and much-discussed question of the relative dating of the two recensions of *De unitate* 4 does not impinge on our present discussion, for the purposes of which 251 can be assumed (see, for example, Cyprian, *De Lapsis and De Ecclesiae Catholicae Unitate*, ed. and tr. Maurice Bévenot, Oxford Early Christian Texts (Oxford: Clarendon Press, 1971), xi. Dunn, 'Heresy and Schism', 558, concurs: the work was 'written about the time of the post-Easter episcopal synod of 251'.

again into the snare of death, but being alive to the danger, hold fast to the immortality given us. And how can we hold fast to immortality unless we observe those commandments of Christ by which death is defeated and conquered? He Himself assures us: *‘If thou wilt attain to life, keep the commandments’*; and again: *‘If ye do what I command you, I call you no longer servants but friends.’* It is those who so act that he says are strong and firm; it is *they* that are founded in massive security upon a rock, *they* that are established in unshakable solidity, proof against all the storms and hurricanes of the world. *‘Him that heareth my words and doeth them’*, He says, *‘I will liken to the wise man who built his house upon the rock. The rain fell, the floods rose, the winds came and they crashed against that house: but it fell not. For it was founded upon the rock.’*

We must therefore carry out His words: whatsoever He taught and did, that must we learn and do ourselves. Indeed how can a man say that he believes in Christ if he does not do what Christ commanded him to do? Or how shall a man who under command will not keep faith, hope to receive the reward of faith? He will inevitably falter and stray, and caught up by some gust of error (*spiritu erroris abreptus*) will be tossed about like wind-swept dust. A man will make no advance towards salvation when the path he is following is not the true one.⁴⁴⁹

⁴⁴⁹ Cyprian, *De ecclesiae catholicae unitate*, 2 (tr. Bévenot, 57—9). *Unde nobis exemplum datum est veteris hominis viam fugere, vestigiis Christi vincentis insistere; ne denuo incauti in mortis laqueum revolvamur, sed ad periculum provide accepta immortalitate petiamur. Immortalitate autem potiri quomodo possumus, nisi ea quibus mors expugnatur et vincitur Christi mandata servemus, ipso monente et dicente: ‘Si vis ad vitam venire serva mandata’, et iterum: ‘Si feceritis quod mando vobis, iam non dico vos servos sed amicos’? Hos denique fortes dicit et stabiles, hos super petram robusta mole fundatos, hos contra omnes tempestates et turbines saeculi immobili et inconcussa firmitate solidatos: ‘Qui audit inquit verba mea et facit ea, similabo eum viro sapienti qui aedificavit domum suam super petram.’ Verbis igitur eius insistere, quaecumque et docuit et fecit discere et facere debemus. Ceterum credere se in Christum quomodo dicit, qui non facit quod Christus facere praecepit? Aut unde perveniet ad praemium fidei, qui fidem non vult servare mandati? Nutet necesse est et vagetur et, spiritu erroris abreptus, velut pulvis quem ventus excutit, ventiletur; nec ambulando proficiet ad salutem, qui salutaris viae non tenet veritatem* (Bévenot, 56—8).

As Dunn has shown, this passage from Cyprian is largely reflective of Cyprian's broader perspective on schism and heresy.⁴⁵⁰ Interestingly for our purposes, there seems to be the possibility of heresy turning into schism in this statement of Cyprian's: 'He will inevitably falter and stray, and caught up by some gust of error (*spiritu erroris abreptus*) will be tossed about like wind-swept dust.'⁴⁵¹ In certain respects, it is the converse statement of Augustine's argument for schism turning into heresy in *c. Cresc.* 2.7, as we shall see. However, Cyprian seems to envision both possibilities in this work. Indeed, Cyprian thought they were inextricably linked to one another, and, as Dunn has argued, this continued a long-standing tradition dating back to Paul of using the two terms in a closely interrelated, although not quite synonymous, manner.⁴⁵²

Dunn's treatment of Cyprian's writings on this topic has firmly established Cyprian's posture on schism and heresy, and so only one further reference to Cyprian will be included here for the purpose of demonstrating the pertinent point for this chapter that Cyprian used schism and heresy in a closely interrelated manner.

⁴⁵⁰ Dunn's 'Heresy and Schism' provides an excellent summary of each of Cyprian's writings that references *haeresis* or *schisma*. This section's analysis closely follows Dunn's judgement that: 'What we find in Cyprian is a refusal to separate belief and practice: deviant belief would lead to a break in the unity and a break in unity would prevent any unity of belief. In more modern terms, for Cyprian there could be no heresy without schism and no schism without heresy. When he referred to schism alone his comments were about those who had broken from the unity of communal life and practice' (Dunn, 'Heresy and Schism', 559). Compare Dunn's judgement on this point with Gerald Bonner, who argues that Cyprian was the first to equate schism with heresy: Bonner, '*Dic Christi Veritas*', 67. Dunn writes: 'I do not support Bonner's notion that Cyprian introduced the equating of the two terms (which would presume that they were clearly distinct prior to Cyprian) and that over time the distinction became even more unclear. In North Africa we can certainly go back to our earlier evidence with Tertullian to find that the two terms still had the same overlapping in meaning as we find in the New Testament' (Dunn, 'Heresy and Schism', 573).

⁴⁵¹ Cyprian, *De ecclesiae catholicae unitate* 2. As Dunn has noted, 'What Cyprian seems to have written is that those who subscribe to alternative ideas soon become those who are members of alternative communities' ('Heresy and Schism'), 560.

⁴⁵² Following Dunn, 'Heresy and Schism', 560.

Writing in late 251 to Cornelius regarding the schismatic leader Novatian,⁴⁵³ Cyprian opens the letter with a greeting and then begins a discussion of certain people who, according to Cyprian:

(3.1) ... at times upset men's hearts and minds by their talk, falsely reporting how the truth stands. We are clear what we have been doing about this.

To all who were sailing away we explained to them the situation individually so that they should not be scandalized on their travels, exhorting them to discern the womb and root of the Catholic Church and to cleave to it.

(3.2) Unfortunately, our province is unusually widespread, including the adjoining areas of Numidia and Mauretania. It was, accordingly, the resolution of the bishops to prevent any perplexity being created in the minds of our far-distant brethren through uncertain information about a schism in Rome. We should therefore hold back the full truth of the matter and the time for us to express our assent to your appointment was when the authority for doing so had been made the stronger; then, when individual consciences had been cleared of every last scruple, letters should be sent by every one of us over here, without exception (as is now being done). Thus, all our colleagues should together unequivocally express their approval of, and attach themselves to, you and your communion, that is to say, abide by the unity and, along with that, the charity of the Catholic Church.

⁴⁵³ *Ep.* 48. The letter is placed 'in (?) mid-year 251' by G.W. Clarke, *The Letters of St. Cyprian of Carthage*, tr. G.W. Clarke, 4 vols, Ancient Christian Writers 43—4, 46—7 (New York: Newman, 1984—9), 2, 253; see his full discussion of 'date and circumstances', 2, 251—3. Dunn notes that 'By this point Novatian was already what we today would describe as schismatic' ('Heresy and Schism', 561).

By God's grace this has all happened; by His providence our plan has succeeded. And in this we take joy.⁴⁵⁴

Basil on Schism and Heresy

While Basil's views on schism and heresy are too broad a topic to cover in depth in this chapter, a letter of Basil to Amphilochius sets forth a fairly clear distinction between schism and heresy. Thus, Basil writes:

Now regarding your inquiry about the Cathari [Novatians], mention has already been made, and rightly have you called to mind that we should follow the custom existing in each region, because those who once rendered a decision in their regard held divergent views about their baptism. But the baptism of the Pepuzeni seems to me to have no sanction, and I have wondered how this escaped Dionysius, versed as he was in the canons. For the ancients decided to accept that baptism which in no wise deviates from the faith. Accordingly, they employed the names: heresies, schisms, and illegal congregations; *heresies, those who are completely broken off and, as regards the faith itself, alienated; schisms, those at variance with one another for certain ecclesiastical reasons and questions that admit of a remedy*; illegal congregations, assemblies brought into being by

⁴⁵⁴ Cyprian, *Ep.* 48.3.1—2 (tr. Clarke, 2, 75—6). The full text of *Ep.* 48.3.1—2 reads: (3.1) *Quidam tamen mentes nonnumquam et animos sermonibus suis turbant, dum aliter quaedam quam se habet ueritas nuntiant. Nos enim singulis nauigantibus, ne cum scandalo ullo nauigerent, rationem reddentes, scimus nos hortatos eos esse ut ecclesiae catholicae radicem et matricem agnoscerent ac tenerent. (2) Sed quoniam latius fusa est nostra prouincia, habet etiam Numidiam et Mauretianas duas sibi cohaerentes, ne in urbe schisma factum absentium animos incerta opinione confunderet, placuit per episcopos retenta a nobis rei ueritate et ad conprobendam ordinationem tuam facta auctoritate maiore, tunc demum scrupulo omni de singulorum pectoribus excusso, per omnes omnino istic positos litterae fierent, sicut fiunt, ut te uniuersi collegae nostri et communicationem tuam id est catholicae ecclesiae unitatem pariter et caritatem probarent firmiter et tenerent. Quod diuinitus euenisse et consilium nostrum prouidenter profecisse gaudemus* (Sancti Cypriani Episcopi *Epistularium*, ed. G.F. Diercks, 4 vols, CCSL 3A—D (Turnhout: Brepols, 1994—9), 2 (CCSL 3B), 229—30).

insubordinate presbyters or bishops, and by un-instructed laymen. For example, if someone who has been apprehended in error has been forbidden the exercise of his office and has not submitted to the canons, but has unjustly arrogated to himself the episcopal and priestly functions, and certain people, abandoning the Catholic Church, have gone along with him, ... such an affair is illegal congregation. And schism is to be at variance regarding penance with those belonging to the Church. And heresies are, for example, those of the Manichaeans, of the Valentinians, of the Marcionites, and of these very Pepuzeni; for here at once regarding faith in God itself disagreement exists.⁴⁵⁵

While Basil still treats the terms in a closely related way, he also interprets the ‘ancients’ to have understood that heresies relate to ‘the faith itself’, while schisms comprise ‘those at variance with one another for certain ecclesiastical reasons and questions that admit of a remedy’. Moreover, for Basil, disagreement on the matter of repentance is schism while, on the other hand, heresies are those things that concern the actual faith in God. He goes on to say, ‘The ancients, accordingly, decided to reject completely the baptism of heretics, but to accept that of schismatics on the ground that they were still of the Church ...’⁴⁵⁶ Later, he would also say that: The Cathari themselves also belong to the number of schismatics. Still, however, it seemed best to the ancients – I refer to Cyprian and our own Firmilianus – to subject all these – Cathari, and Encratites, and Hydroparastatae – to one vote of condemnation, because the beginning of this separation arose through schism, and those who had broken away from the Church no longer had in them the grace of the Holy Spirit; for the imparting of it failed because of the severance of continuity.⁴⁵⁷

⁴⁵⁵ Basil, *Ep.* 188.1 (Basil, *Letters*, tr. Roy J. Deferrari, 4 vols, LCL 190, 215, 243, 270 (London: Heinemann, 1926—39; here, 2 (LCL 190), 7—13. Emphasis added).

⁴⁵⁶ Basil, *Ep.* 188.1 (tr. Deferrari, LCL 190, 13). Also, see chapter three’s discussion in Chapter 3 above on Augustine’s practical concerns about labeling the Donatists as Trinitarian heretics on the point of rebaptism.

⁴⁵⁷ Basil, *Ep.* 188.1 (tr. Deferrari, LCL 190, 15—17).

Basil also notes in the same letter:

For those who separated first had ordination from the fathers, and through the imposition of their hands possessed the spiritual gift; but those who had been cut off, becoming laymen, possessed the power neither of baptizing nor of ordaining, being able no longer to impart to others the grace of the Holy Spirit from which they themselves had fallen away. Therefore, they commanded those who had been baptized by them, as baptized by laymen, to come to the Church and be purified by the true baptism of the Church. But since on the whole it has seemed best to some of those in Asia that, for the sake of the discipline of the majority, their baptism be accepted, let it be accepted.

We must, however, observe the wicked action of the Encratites, for in order to render themselves unacceptable to the Church they have attempted for the future to forestall the matter by practising a peculiar baptism of their own, whereby they have violated even their own practice. Accordingly I think that, since nothing has been clearly established regarding them, it is proper for us to reject their baptism, and if anyone has received it from them, to baptize him on his entering the Church. If, however, this shall prove to be injurious to the general discipline, we must resort again to custom, and must follow the fathers who have dispensed legislation that pertains to us. For I entertain some fear lest, while we desire to make the people cautious about baptizing, we may by the severity of our decision stand in the way of those who are being saved. But if they maintain our baptism, let this not disturb us. For we are not under obligation to return them the favour, but to observe the canons scrupulously. And on every ground let it be decreed that those who come from their baptism be anointed, to wit, in the presence of the faithful, and thus approach the mysteries. But I know that we have received the brethren Izois and Saturninus into episcopal rank, who were of that party. Therefore we can no longer separate from the Church those who have

joined their company, since through the acceptance of the bishops we have published a kind of canon of communion with them.⁴⁵⁸

We see here the significant implications of these distinctions between heresy and schism for the questions of rebaptism, points that would arise many times in the Donatist controversy. However, our purpose is more narrow, and that is to simply note that Basil thought of heresy and schism as terms that could be distinguished. For Basil, it would seem that heresy pertained to the ‘the faith itself’, while schism was a breaking of communion. It is a point that we can also see in the anti-Donatist writings of Optatus.

Optatus on Schism and Heresy

In an argument that is similar to Basil’s, and likewise moves away from the earlier articulations of Tertullian and Cyprian, Optatus is keen to show to his Donatist opponent Parmenian the distinction between heretics and schismatics. Indeed, Optatus spends much of the first book of his polemical work, *Against the Donatists*, making precisely that point. Towards the beginning of the first book, Optatus states the reason why the Donatist ‘schismatics’ should be considered brethren of Optatus’s Catholic party:

But, in case anyone should say that I am rash to call people of this kind brethren, we cannot bereave them of Isaiah’s prophecies. Although even they do not deny, and everyone is aware, that they feel hatred toward us and curse us, declining to be called our brethren, we nevertheless cannot depart from the fear of God, since the Holy Spirit exhorts us through the prophet Isaiah, saying: You who fear the word of the Lord, hear the word of the Lord: *those who feel hatred toward you and curse you, declining to be called your brethren, say to them nevertheless, ‘You are our brethren’*. They are therefore undoubtedly brethren, though not good ones. So let no-one be surprised to hear me call those people brethren who cannot fail to be brethren. We and they, indeed, share one spiritual birth, but our actions

⁴⁵⁸ Basil, *Ep.* 188.1 (tr. Deferrari, LCL 190, 17—21).

are contrary. For it is also true that Ham, who impiously ridiculed his father's nakedness, was the brother of innocent men, and incurred the yoke of slavery for his own fault, so that one brother was indentured to another. Therefore this name of brother is not lost even when sin intervenes. But in another place I shall speak of the crimes of those brethren who, sitting over against us, slander us and assail us with scandal, who conspire with that thief who steals from God and make common cause with adulterers, that is with heretics, praising their own sins while they contrive accusations against us, the catholics.⁴⁵⁹

In a later section, Optatus returns to this same point and distinguishes heretics from schismatics:

Heretics, on the other hand, exiles from the truth who have deserted the sound and truest creed, fallen from the bosom of the church through their impious sentiments, contemptuous of their good birth, have set out to deceive the ignorant and unlearned by claiming to be born of themselves. And whereas they had previously fed on wholesome foods, through the corruption of a bad digestion they vomited forth lethal poisons in their impious disputations to destroy their wretched victims. You therefore see, brother Parmenianus, that heretics, being

⁴⁵⁹ Optatus, 1.3 (tr. Edwards, 2—3). *Sed ne quis dicat inconsiderate me eos fratres appellare, qui tales sunt, ab Esaiae prophetae uocibus [increpati] exorbitare non possumus. quamuis et illi non negent et omnibus notum sit, quod nos odio habeant et execrentur et nolint se dici fratres nostros, tamen nos recedere a timore dei non possumus, quos hortatur spiritus sanctus per Esaiam prophetam dicens: uos qui timetis uerbum domini, audite uerbum domini: hi qui uos odio habent et execrantur et nolunt se dici fratres uestros, uos tamen dicite eis: 'fratres nostri estris'. sunt igitur sine dubio fratres, quamuis non boni. quare nemo miretur eos me appellare fratres, qui non possunt non esse fratres. est quidem nobis et illis spiritalis una natiuitas, sed diuersi sunt actus. nam et Cham, qui patris sui risit in pie nuditatem, frater innocentium fuit et pro merito suo iugum seruitutis incurrit, ut esset fratribus frater addictus. ergo hoc nomen fraternitatis nec interueniente peccato deponitur. sed de istorum fratrum delictis dicam alio loco, qui sedentes aduersus nos detrahunt et contra nos scandala ponunt et cum illo fure concurrunt, qui deo furtum facit, et cum meochis, id est cum haereticis, partem suam ponunt et peccata sua laudant et conuicia contra nos catholicos meditantur* (Ziwsa)

wholly estranged from the house of truth, are the only ones who have different and false baptisms, by which he who is soiled cannot wash, nor the unclean cleanse, nor the subverter restore, nor the condemned bring freedom, nor the criminal bestow pardon, nor the condemned grant absolution.⁴⁶⁰

The emphasis on treating the Donatists as brethren is repeated throughout Optatus' writings and specifically found in the recurring use of *frater Parmeniane* in the above passage and at other places throughout the text along with *frater meus*.⁴⁶¹ Optatus also further establishes a clear distinction between schism and heresy in chapter eleven of the same book. In particular, he relates to Parmenian the marks of the Catholic Church and of schism as follows:

The catholic church is made known by simplicity and truth in knowledge, singleness and absolute truth in the sacrament, and unity of minds. A schism, on the other hand, is engendered when the bond of peace is shattered through discordant sentiments, nourished by bitterness, strengthened by rivalry and feuds, so that the impious sons, having deserted their catholic mother, go out and separate themselves, as you have done, and, having been cut off from the root of the mother church by the blade of bitterness, depart in erratic rebellion. *Nor are*

⁴⁶⁰ Optatus, 1.12 (tr. Edwards, 11—12). *Haeretici uero ueritatis exules, sani et uerissimi symboli desertores, de sinu sanctae ecclesiae inpiis sensibus deprauati, contempto, quod bene fuerant geniti, ut ignorantes et rudes deciperent, de se nasci uoluerunt. et qui iamdudum uitalibus pasti fuerant cibus, correptela male digestionis in perniciem miserorum disputationibus inpiis uenena mortifera uomuerunt. uides ergo, frater Parmeniane, haereticos a domo ueritatis satis extorres solos habere uaria et falsa baptismata, quibus inguinatus non possit abluere, immundus emundare, subplantator erigere, perditus liberare, reus ueniam tribuere, damnatus absoluere* (Ziwsa).

⁴⁶¹ See for examples of both, Optatus, 1.4.

*they able to do anything new or anything else, except what they have long since learned from their own mother.*⁴⁶²

The last line of this passage is significant. In this treatment of schism and heresy, Optatus is departing from both Cyprian's judgements and, more broadly the early Church's tradition of dealing with the two terms in an interrelated and ambiguous manner. He does not see in schism the possibility for errors in doctrine that Cyprian did. As we have seen, for Cyprian, when it came to schism and heresy, the one might lead to the other. However, for Optatus, the separation of schismatics is inspired by passion and nourished by hatred. The true Church is characterized by sound doctrine and by unity of minds, while the heretics disagree with the true Church on matters of doctrine. In Optatus' telling, even after the Church has been abandoned by schismatics, they are not 'able to do anything new or anything else, except what they have long since learned from their own mother' (Optatus, 1.11). The point is fairly clear as it is set out by Optatus: schism is not about false doctrine, but rather about separating from the Church out of passion and nourishing that separation with hatred. Heresy is another matter entirely. His Donatist opponent, Parmenian, did not agree.

Parmenian on Schism and Heresy

We learn about Parmenian's own perspective on schism and heresy because Optatus also writes at length about the view of schism and heresy of his opponent, Parmenian. It is a theological point at which Parmenian seems to have followed the understanding of Cyprian and much of the early Church. The reports of Optatus about Parmenian's perspective can be seen as trustworthy precisely because they match Cyprian's use of the terms. The work of Parmenian's to which Optatus refers is lost, but we get some sense of its argument from Optatus' response in a section

⁴⁶² Optatus, 1.11 (tr. Edwards, 11). *Catholicam facit simplex et uerus intellectus intellegere, singulare ac uerissimum sacramentum ut unitas animorum. scisma uero sparso coagulo pacis dissipatis sensibus generatur; liuore nutritur, aemulatione et litibus roboratur; ut deserta matre catholica inpii filii, dum foras exeunt et se separant, ut uos fecistis, a radice matris ecclesiae inuidiae falcibus amputati errando rebelles abscedunt; nec possunt nouum aliquid aut aliud agere, nisi quod iamdudum apud suam didicerant matrem.*

from the first book of *Against the Donatists* in which Optatus references ‘your lengthy discourse about these heretics *quod diu locutus es*’.⁴⁶³ In regards to this lost book of Parmenian’s, Optatus wonders why ‘you saw fit to join yourselves to those who are patently schismatics, when you have denied the gifts of God both to these very heretics and to yourselves who are in schism’.⁴⁶⁴ What Optatus understood of Parmenian’s treatment of heresy and schism is set out in the same chapter:

... you have said that heretics cannot possess the gifts of the church, and you have said rightly; for we know that the churches of individual heretics are prostitutes without any legal sacraments, who lack the status of an honest marriage. These Christ rejects as superfluous, he who is the bridegroom of the one church, as he himself declares in the Song of Songs. When he praises one, he condemns the others, since apart from one which is truly catholic, the others are believed to exist by heretics, but do not. This follows from the fact that he affirms in the Song of Songs, as we said above, that there is one dove that is his, the same being his chosen bride, his enclosed garden and his sealed font, so that none of the heretics may have the keys which Peter alone received, nor the ring by which the font is said to have been sealed; nor (he says) is any of them the occupant of the garden in which God plants his trees.⁴⁶⁵

⁴⁶³ Optatus, 1.10 (tr. Edwards, 10).

⁴⁶⁴ Optatus 1.10 (tr. Edwards, 10).

⁴⁶⁵ Optatus 1.10 (tr. Edwards, 9—10). *interea dixisti apud haereticos dotes ecclesiae esse non posse et recte dixisti; scimus enim haereticorum ecclesias singulorum prostitutas nullis legalibus sacramentis et sine iure honesti matrimonii esse. quas non necessarias recusat Christus. qui est sponsus unius ecclesiae, sicut in canticis canticorum ipse testatur. qui cum unam laudat, ceteras damnat, quia praeter unam, quae est uere catholica, ceterae apud haereticos putantur esse, sed non sunt; secundum quod indicat, ut supra diximus, in canticis canticorum unam esse columbam suam, eandem sponsam electam, eundem hortum conclusum et fontem signatum, ut haeretici omnes neque claves habeant, quas solus Petrus accepit, nec anulum. quo legitur fons esse signatus, nec aliquem illorum esse, ad quem hortus ille pertineat, in quo deus arbuscalas plantat* (Ziwsa).

Optatus continues to characterize Parmenian's perspective on schism and heresy as follows:

Your lengthy discourse about these heretics, though it has nothing to do with the present matter, has been sufficient and more. But I wonder why you saw fit to join yourselves to those who are patently schismatics, when you have denied the gifts of God both to these very heretics and to yourselves who are in schism. For you have said, among other things, that schismatics are cut off like branches from the vine, and, being destined for punishment, are reserved like dry wood for the fires of Gehenna. But I see you are as yet ignorant that the schism at Carthage was created by your leaders. Inquire into the origin of these affairs, and you will find that you have pronounced this judgment on your own party, as you have numbered heretics with schismatics. For it was not Caecilian who seceded from Majorinus your grandfather, but Majorinus from Caecilian; nor did Caecilian secede from the see of Peter or Cyprian but Majorinus. It is his see that you occupy, which before that same Majorinus had no existence. And when it is patent and notorious that this is how these things were done, and it is manifestly obvious that you are the heirs of collaborators and schismatics, I am rather surprised, brother Parmenianus, that being a schismatic you have elected to join schismatics with heretics.

Or if that seems right to you and this is your decision, tot up those things which you have said a little earlier. For you declared it to be impossible that one who was soiled could wash with his false baptism, that the unclean could cleanse, that the subverter could restore, that the condemned one could bring freedom, that the criminal could bestow pardon, that the damned could grant absolution. All these things could well have applied to the heretics alone: they have falsified the creed, seeing that one speaks of two gods when God is one, another tries to discern the Father in the person of the Son, another steals from the son of God the

flesh by which the world has been reconciled to God, and there are others of this kind who are known to be strangers to the catholic sacraments. Hence you should repent of having added schismatics also to this class of men; for you have turned the sword of judgment against yourself, since you think you were aiming at others, and have not considered how great a distinction there is between schismatics and heretics.⁴⁶⁶

Optatus concludes with the observation, ‘Hence it is that you also do not know what the holy church is; and thus you have confused everything.’⁴⁶⁷ Passages such as these in Optatus have led Jesse Hoover to speculate that Parmenian may have composed an *indiculus* of heresies

⁴⁶⁶ Optatus 1.10 (tr. Edwards, 10—11). *de quibus haereticis, quamuis ad praesentem non pertineat causam, quod diu locutus es, et suffecerat et abundabat. sed miror, quid tibi uisum est etiam uos ipsos eis adiungere, quos esse scismaticos constat, dum ecclesiae dotes et haereticis ipsis et uobis scismaticis denegasti. dixisti enim inter cetera scismaticos a uite uelut sarmenta esse concisos, destinatos poenis tamquam ligna arida gehennae ignibus reservari. sed uideo te adhuc ignorare scisma apud Carthaginem a uestris principibus factum. quaere harum originem rerum et inuenies te hanc in uos dixisse sententiam, cum scismaticis haereticos sociasti. non enim Caecilianus exiuit a Maiorino auo tuo sed Maiorinus a Caeciliano; nec Caecilianus recessit a cathedra Petri uel Cypriani sed Maiorinus cuius tu cathedram sedes quae ante ipsum Maiorinum originem non habet. et cum haec ita gesta esse manifestissime constet, et uos heredes traditorum et scismaticorum esse euidenter adpareat, satis te minor, frater Parmeniane, cum scismaticus sis, scismaticos haereticis iungere uoluisse. aut si sic tibi uidetur et ita placet, cumula illa, quae a te paulo ante sunt dicta. dixisti enim fieri non posse, ut [in] falso baptisate inquinatus abluat, immundus emundet, subplantator erigat, perditus liberet, reus ueniam tribuat, damnatus absoluat. bene haec omnia potuerunt ad solos haereticos pertinere, quia falsauerunt sybolum, dum alter dixit duos deos, cum deus unus sit, alter patrem uult in persona filii cognosci, alter carnem subducens filio dei, per quam deo reconciliatus est mundus, et ceteri huiusmodi, qui a sacramentis catholicis alieni esse noscuntur. quare paeniteat te talibus hominibus etiam scismaticos adiunxisse; in te enim conuertisti sententiae gladium, dum aestimas, quia alteros adpetebas et non adtendisti, inter scismaticos et haereticos quam sit magna distantia (Ziwsa).*

⁴⁶⁷ Optatus, 1.10 (tr. Edwards, 11). ‘inde est, quod ignorans, et quae sit sancta ecclesia; et sic omnia miscuisti’ (Ziwsa).

in which he included both schismatics and heretics.⁴⁶⁸ It is a fascinating conjecture and one we might also make about another Donatist polemicist, the grammarian Cresconius, as we will see.

In chapter twelve of the same book, Optatus returns to Parmenian's own arguments about schism and heresy. In particular, he says about Parmenian's position on schism and heresy:

You have rightly closed the garden to the heretics, you have rightly recalled the keys to Peter, you have rightly taken away the power of cultivation lest those who are patently alien to the garden and paradise of God should cultivate their trees; you have rightly taken away the ring from those who are not allowed to admit to the font. To you schismatics, on the other hand, although you are not in the catholic church, these things cannot be denied, because you have administered with us the true and common sacraments. So, whereas all these things are rightly denied to heretics, why did you think it proper to desire that these be denied to you also, who are manifestly schismatics? For you stand without. So far as in us lies, our wish was that only heretics should be damned; *so far as in you lies, you have desired that we strike you together with them in a single judgment.*⁴⁶⁹

It should be noted that at this point we have a theological threat from Optatus that would grow into the juridical policy of both parties in the 390s and early 400s. Optatus condemns Parmenian for merging schism with heresy. Parmenian probably did so to argue against what he

⁴⁶⁸ Hoover, 'Arius and Mani and Montanus, O My! Perceptions of Heresy within the Donatist Church', 2: http://www.academia.edu/32690191/Arius_and_Mani_and_Montanus_O_My_Perceptions_of_Heresy_within_the_Donatist_Church

⁴⁶⁹ Optatus, 1.12 (tr. Edwards, 12; (emphasis added). *bene clausisti hortum haereticis, bene reuocasti claues ad Petrum, bene absulisti colendi potestatem, ne arbusculas colerent ii, quos ab hortulo et a paradiso dei constat alienos; bene subduxisti anulum iis, quibus aperire non licet ad fontem. uobis uero scismaticis, quamuis in catholica non sitis, haec negari non possunt, quia nobiscum uera et communia sacramenta traxistis. quare cum haec omnia haereticis bene negentur, quid tibi uisum est haec et uobis negare uoluisse, quos scismaticos esse manifestum est? uos enim foras existis. quantum in nobis est, uolebamus, ut soli damnarentur haeretici; quantum in te est, etiam uos ipsos cum eis una sententia ferire uoluisti (Ziwsa).*

perceived as the Catholic schismatics. In Parmenian's ambiguity on the differences between schism and heresy, we see a theological blurring of the lines between schism and heresy which probably assisted him in his polemic against Optatus, whom he no doubt viewed as a schismatic from the true Church. But Optatus argues that such an identification will result in the Donatists being condemned instead. At this point, these are simply words. The enforcement mechanism that both men lacked would come into place in 392; for both men set forth these arguments about schism and heresy before the imperial anti-heresy legislation of June 392 (*CTh.* 16.5.21) was in force.⁴⁷⁰ As we will see, the enactment of that legislation in 392 would have a great effect on both parties' treatment of schism and heresy. It is to that legislation that we now turn our attention.

5.3 Augustine's Justification for Coercion

Scholarship on Augustine's Change of Mind on Coercion

This section takes up the place of the imperial anti-heresy legislation of 392 in Augustine's justification for coercion. It is argued here that Augustine's posture on coercion of the Donatists was shaped by their own appeals for coercion of their schismatics under the imperial anti-heresy legislation of 392. This point leads to greater nuance in one of the most influential explanations of Augustine on coercion: the model of understanding Augustine's attitude towards coercion as an evolving one. As described more fully in the introduction, the two definitive treatments of Augustine's evolving posture on coercion are still those of Peter Brown and Émilien Lamirande,

⁴⁷⁰ Following Mark Edwards' dating of the final version of Optatus' text to 384. See Edwards' introduction to *Against the Donatists*, xviii.

and both scholars took such an approach.⁴⁷¹ This chapter is not intended to interact with every scholarly model of understanding Augustine on coercion, a number of which were previously addressed in the Introduction, but rather is intended to bring to the table one often overlooked factor for understanding Augustine on coercion: the juridical context in which Augustine made his definitive justification for coercing the Donatists in *contra Cresconium* 2.7. A careful examination of the place that Augustine's own precedents held in his justifications for coercion both carries forward Brown's and Lamirande's intuition that Augustine's posture on coercion evolved over time, and offers certain important new insights. Most importantly, a critical examination of Augustine's juridical context shows the significant place that the imperial anti-heresy legislation of 392 and the Donatists' own appeals pursuant to that legislation against their own schismatics held in his justification for coercion.

This is the point at which this study's unique methodology allows us to focus on one aspect of Augustine's justification for coercion which has been largely lacking in the scholarship

⁴⁷¹ See Hermanowicz, *Possidius of Calama*, 98, noting that Brown's work is still the definitive treatment of Augustine and coercion, along with Lamirande's, and F.H. Russell, 'Persuading the Donatists: Augustine's Coercion by Words', in William E. Klingshirn and Mark Vessey (eds), *The Limits of Ancient Christianity: Essays on Late Antique Thought and Culture in Honor of Robert A. Markus* (Ann Arbor: University of Michigan Press, 1999), 115—30. For a recent summary of the scholarship on coercion, Lamb, 'Augustine and Republican Liberty', is essential. It bears noting that none of the currents of thought summarized by Lamb take as their starting point the Donatists' own legal strategies. Also important are the following: Gaumer and Dupont, 'Understanding Augustine's Changing Justification'; Gaumer and DuPont, 'Donatist North Africa and the Beginning of Religious Coercion by Christians: A New Analysis', *Ciudad de Dios: Revista Agustiniiana* 223 (2010): 445—6; van Egmond, 'Merciful Severity'; Paul Van Geest, 'Quid dicam de vindicando vel non vindicando? (*Ep.* 95, 3). Augustine's Legitimation of Coercion in the Light of His Roles of Mediator, Judge, Teacher and Mystagogue', in *Violence in Ancient Christianity. Victims and Perpetrators*, Supplements to Vigiliae Christianae. Texts and Studies of Early Christian Life and Language 125 (2014): 151—84; Van Geest, 'Timor est servus caritatis (s. 156,13-14): Augustine's Vision on Coercion in the Process of Returning Heretics to the Catholic Church and his Underlying Principles', in Anthony Dupont *et al.* (eds), *The Uniquely African Controversy: Studies on Donatist Christianity* (Leuven: Peeters, 2015), 289—310; D.L. Riggs, 'Christianizing the Rural Communities of Late Roman Africa: A Process of Coercion or Persuasion?', in H.A. Drake, *Violence in Late Antiquity. Perceptions and Practices* (Aldershot: Ashgate, 2006), 297—309; Kevin Uhalde, *Expectations of Justice in the Age of Augustine* (Philadelphia, University of Pennsylvania Press, 2007).

to date. In particular, a methodological determination to look first at Augustine's own North African juridical precedents and only then to turn forward to look at Augustine's posture on coercion has led us to see the extent to which the Donatists' own juridical strategy influenced Augustine's justification of coercion. It is argued that an understanding of Augustine on coercion that fully factors in the Donatists' own legal appeals will result in an appreciation for how ordinary and unexceptional Augustine's legal strategies were, and how dependent they were on the legal precedents created by the imperial legislation of 392 and the Donatists' own appeals. At the same time, our analysis causes us to ask about the places where Augustine was ultimately more successful than the Donatists had been in using the same juridical methods.

In what follows, we will see that Augustine's own legal precedents controlled much of his evolving posture on coercion, leading him to his clearest articulation of his justification for coercion in the *contra Cresconium*. It is to that work that we now turn our attention.

Schisma Inveteratum as a Legal Category in the *Contra Cresconium*

The *contra Cresconium* is a four-book treatise Augustine wrote against the Donatist grammarian Cresconius in the pivotal year of the Donatist controversy of 405/406.⁴⁷² It is a work of Augustine's that has yet to receive sufficient attention in much of the English-language theological scholarship on Augustine and coercion, probably due to the fact that there has yet to be a complete English translation of this work.⁴⁷³ The situation is somewhat better in the French and German scholarship on Augustine and coercion, where French and German translations of the *contra Cresconium* from 1968⁴⁷⁴ and 2014⁴⁷⁵ respectively have both noted the significance of

⁴⁷² See prior discussion of the dating and publication of the *contra Cresconium* in Chapter three.

⁴⁷³ 'The Works of St. Augustine, A Translation for the 21st Century' series, ed. John E. Rotelle (New City Press) promises an English translation soon: http://www.newcitypress.com/media/downloads/Listing_of_Future_Publications_in_WSA.pdf

⁴⁷⁴ G. Finaert and A.-C. De Veer (ed. and tr.), *Traites anti-Donatistes IV: Réponse à Cresconius, grammarian et donatiste; Livre sur l'unique baptême*, Bibliothèque Augustinienne 31 (Paris: Desclée de Brouwer, 1968).

⁴⁷⁵ Hermann Joseph Sieben (ed. and tr.), *Ad Cresconium – An Cresconius*, Augustinus Opera – Werke 30 (Paderborn: Ferdinand Schöningh, 2014).

Augustine's legal categorization of the Donatists as heretics in *c. Cresc.* 2.7. Moreover, Serge Lancel's excellent biography of Augustine has led the way for Anglophone scholars of Augustine by identifying the importance of the *contra Cresconium* for discerning the juridical nature of Augustine's justification for coercion.⁴⁷⁶ Moreover, recent works by classicists and historians such as Jill Harries,⁴⁷⁷ Caroline Humfress,⁴⁷⁸ and Erika Hermanowicz⁴⁷⁹ on the juridical nature of Late Roman ecclesiastical controversy have also shed light on the importance of the legal categories of schism and heresy for Augustine's categorization of the Donatist Church as *schisma inveteratum* (*c. Cresc.* 2.7).

Writing against the Donatist grammarian Cresconius in 405/406, after the imperial legislation of February 405 was in place, Augustine observes that Cresconius has sought to distinguish between heresy and schism.⁴⁸⁰ Interestingly for our purposes, Cresconius probably made that distinction himself in face of imperial legislation punishing the Donatists as heretics.⁴⁸¹

One pertinent portion of the imperial legislation from February 405 reads as follows:

3. Emperors Arcadius, Honorius, and Theodosius Augustuses: An Edict.

We do not tolerate the devious false doctrines of rebaptism. (Etc.)

⁴⁷⁶ Lancel, *Saint Augustine*, 275—85. See also Schindler, 'Die Unterscheidung von Schisma und Häresie'.

⁴⁷⁷ Harries, *Law and Empire in Late Antiquity*.

⁴⁷⁸ Humfress, *Orthodoxy and the Courts*.

⁴⁷⁹ Hermanowicz, *Possidius of Calama*.

⁴⁸⁰ *c. Cresc.* 2.4.

⁴⁸¹ Cf. Hoover, 'Arius and Mani and Montanus, O My!', 2, in which Hoover argues that Cresconius wrote a list of heresies in the early 390s. It is more probable that the distinctions between schism and heresy made by Cresconius were the result of imperial legislation repressing the Donatists as heretics. It was a point at which Cresconius departed from an earlier Donatist understanding of schism and heresy, as we saw with our examination of Parmenian on schism and heresy.

Given on the day before the ides of February at Ravenna in the year of the second consulship of Stilicho and the consulship of Anthemius. — February 12, 405.

4. The same Augustuses to Hadrianus, Praetorian Prefect.

We provide by the authority of this decree, that adversaries of the Catholic faith shall be extirpated. By this new constitution, therefore, We especially decree the destruction of that sect which, in order not to be called a heresy, prefers the appellation of schism. For those who are called Donatists are said to have progressed so far in wickedness that with criminal lawlessness they repeat the sacrosanct baptism, thus trampling under foot the mysteries, and they have infected with the contagion of a profane repetition men who have been cleansed once for all by the gift of divinity, in accordance with religious tradition. *Thus it happened that a heresy was born from a schism.* Thence, a seductive false doctrine entices overcredulous minds to the hope of a second forgiveness, for it is easy to persuade that remission once granted can be granted again. But if such remission can be granted a second time in the same way, We do not understand why it should be denied a third time. The aforesaid persons, indeed, pollute with the sacrilege of a second baptism slaves and men subject to their power. Wherefore, We sanction by this law that if any person should hereafter be discovered to rebaptize, he shall be brought before the judge who presides over that province. Thus, the offenders shall be punished by the confiscation of all their property, and they shall suffer the penalty of poverty, with which they shall be afflicted forever. But if their children dissent from the depravity of the paternal association, they shall not forfeit the paternal inheritance. Likewise, if perchance they have been involved in the perversity of the parental depravity and prefer to

return to the Catholic religion, the right to acquire possession of such property shall not be denied them ...⁴⁸²

The phrase from the imperial legislation of 405, ‘Thus it happened that a heresy was born from a schism (*ut haeresis ex schismate nasceretur*)’, is at the core of Augustine’s polemic against Cresconius. Indeed, the argument that the Donatists were a schism that turned into a heresy is at the core of his justification for the coercion of the Donatists under imperial anti-heresy legislation. When Augustine wrote *Cresconius*, the Donatists were being forcibly repressed under imperial legislation which had legally categorized the Donatists as heretics, subject to the penalties of the Theodosian anti-heresy legislation of 392. The Catholic envoys to Honorius in 404 had asked him to enforce the laws of his father against the Donatists. As we saw in Chapter two, the law which could most directly be applied was the anti-heresy legislation of 392. But, as to exactly what constituted a heresy, there was a great deal of ambiguity.⁴⁸³ One sees this point on full display when one examines the imperial legislation of 392 closely. The English text was previously cited in Chapter two, but the Latin text is set forth below due to the importance of the precise Latin phrasing for this section:

In haereticis erroribus quoscumque constiterit vel ordinasse clericos vel suscepisse officium clericorum, denis libris auri viritim multandos esse censemus, locum sane, in quo vetita temptantur, si coniventia domini patuerit, fisci nostri

⁴⁸² CTh. 16.6.3—4 (tr. Clyde Pharr, *The Theodosian Code and Novels, and the Sirmondian Constitutions*, Corpus of Roman Law 1 (Princeton: Princeton University Press, 1952), 464; emphasis added). Latin text: *Theodosiani Libri XVI cum Constitutionibus Sirmondianis et Leges Novellae ad Theodosianum Pertinentes*, ed. Th. Mommsen and Paulus M. Meyer (Berlin: apud Weidmannos, 1905), 881—2

⁴⁸³ See CTh. 16.5.28 from 395 defining heresy with the explication, *Haereticorum vocabulo continentur et latis adversus eos sanctionibus debent subcumbere, qui vel levi argumento iudicio catholicae religionis et tramite detecti fuerint deviare* (*Theodosiani Libri XVI*, ed. Mommsen and Meyer, 864). See also Hermanowicz, *Possidius of Calama*, 130, note 107, observing that ‘In terms of imperial law, the definition of heresy that survives to us is in CTh. 16.5.28, dated to September 395.’

viribus adgregari. Quod si id possessorem, quippe clanculum gestum, ignorasse constiterit, conductorem eius fundi, si ingenuus est, decem libras fisco nostro inferre praecipimus, si servili faece descendens paupertate sui poenam damni ac vilitate contemnit, caesus fustibus deportatione damnabitur. Tum illud specialiter praecavimus, ut, si villa dominica fuerit seu cuiuslibet publici iuris et conductor et procurator licentiam dederint colligendi, denis libris auri proposita condemnatione multentur. Verum si quos talibus repertos obsecundare mysteriis ac sibi usurpare nomina clericorum iam nunc proditum fuerit, denas libras auri exigere singulos et inferre praecipimus. DAT XVII KAL.IUL. CONST(ANTINO)P(OLI) ARCAD(IO) A. II ET RUFINO CONSS.⁴⁸⁴

Immediately apparent to any legal advocate reading this law is the ambiguity of exactly what constitutes *haereticis erroribus*. It would be the task of an effective legal advocate to argue that his opponent fit into the category of *haereticis erroribus*. Moreover, as Chapter three has shown, the Donatist advocates made some sort of argument along these lines in their appeals to imperial officials in the mid-390s when they requested the coercion of the Maximianists pursuant to this legislation.⁴⁸⁵ As any good advocate would be expected to do, Augustine took up the same strategy and made the same sort of argument in the *contra Cresconium* in terms which closely

⁴⁸⁴ *CTh.* 16.5.21 (*Theodosiani Libri XVI*, ed. Mommsen and Meyer, 862—3). English Translation (Pharr) provided in Chapter two.

⁴⁸⁵ We do not know precisely how the Donatist advocates argued for the anti-heresy legislation of 392 to be imposed against the schismatic Maximianists. However, in a number of places in the *contra Cresconium* Augustine points out that the Donatists had labeled the Maximianists as heretics.

follow the legal justification of coercion set forth in the imperial legislation of 405.⁴⁸⁶ Augustine knew that the Donatists had already applied this strategy with some success and had only failed when their imperial support was withdrawn with the defeat of Gildo in 398. Accordingly, Augustine grounded his justification for coercion in an articulation of the close relationship between schism and heresy, one that understood stubborn schism as a sort of heresy, or perhaps the sort of schism that might turn into heresy. As we have seen in Chapters three and four, Augustine knew how to get imperial officials' attention, and here we have a theological articulation of the relationship between schism and heresy that would make sense to an imperial official who might be otherwise unsophisticated about minor points of theology. An imperial magistrate might not understand the nuances of theological controversy, but he would know well the threats posed by stubborn theological factions.

In his response to Cresconius, Augustine says that Cresconius had sought to distinguish between schism and heresy:

Whatever has occurred between us and them, requires judging the appeal whether schism is greater than heresy, and what dialecticians are wont to dare rarely, you even distinguish by definition; where how much you help us, I will not be able to demonstrate enough, unless I insert your words from your letter. 'What does it mean?' – you reply – 'when you say [*indicating Augustine*] that heresy is sacrilegious error. For heresies only happen between those following different [things] nor is a heretic (want to be) except a worshiper

⁴⁸⁶ As discussed in Chapter two, the *contra Cresconium* was clearly written after the imperial legislation of February 405 was in force. However, because it was Augustine who had actively pushed for the determination of Crispinus as a heretic in 403/404 (see discussion of this point in Chapter 3), it is quite likely that the legal rationale for the coercion of the Donatists in February 405 was one offered to the imperial court by Augustine and the Catholic party in 404. While the order in which the one influenced the other is uncertain, that they influenced each other is beyond dispute. Moreover, as we have seen, Augustine had carefully studied the Donatists' legal tactics of the 390s against their own schismatics, a point made clear in his treatment of the nuances of those legal arguments in the *contra Cresconium* – all of which makes it likely that both rationalizations for coercion of schismatics, the one found in the imperial legislation and the one found in Augustine's *contra Cresconium*, originated with the Donatists' own juridical appeals of the 390s.

of a contrary or otherwise interpreted religion. As are the Manichees, the Arians, the Marcionites and others between whom there stands a different judgment against the Christian faith. Between us, to whom the same Christ is born, died and reborn, one religion, the same sacraments, nothing differing in Christian observance, schism has happened, which is not called heresy. For indeed heresy is a sect of those following diverse things: but schism is separation of those following the same thing. Whereby also in this, you see how great an error you have run into, when you call what is schism heresy.' These things (namely) are your words, which I have put down from your letter.

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Accordingly, in responding to Cresconius the same year as the imperial legislation was imposed, Augustine attempts to place Cresconius on the horns of a dilemma *vis-à-vis* the language of the standing imperial legislation. As we have seen above, the imperial legislation had banned the practice of rebaptism and had described the Donatists as heretics who preferred the appellation of schism to avoid its penalties. In Augustine's framing of the argument, Cresconius and the Donatist party are either heretics pursuant to the legislation because they have a theological difference with the Catholics on the matter of rebaptism, something forbidden by the imperial legislation; or, they are heretics because they have no doctrinal differences with the Catholics and have stubbornly turned their schism into a heresy. It is to the latter point that we

⁴⁸⁷ c. Cresc. 2.4 (my translation). *Quamquam id quod inter nos accidit, schisma potius quam haeresim censes appellari oportere, et quod raro audere dialectici solent, etiam definitionibus ista discernis; ubi quantum nos adiuves, satis demonstrare non potero, nisi ex epistola tua inseram verba tua. 'Quid sibi vult – inquis – quod ais haereticorum sacrilegum errorem? Nam haereses nonnisi inter diversa sequentes fieri solent, nec haereticus nisi contrariae vel aliter interpretatae religionis est cultor, ut sunt Manichaei, Ariani, Marcionitae, Novatiani, ceterique quorum inter se contra fidem christianam diversa sententia stat. Inter nos, quibus idem Christus natus, mortuus et resurgens, una religio, eadem Sacramenta, nihil in christiana observatione diversum, schisma factum, non haeresis dicitur. Siquidem haeresis est diversa sequentium secta: schisma vero, idem sequentium separatio. Quare et in hoc, studio criminandi, quantum incurreris vides errorem, cum quod schisma est haeresem vocas.'* Haec nempe verba tua sunt, quae posui ex epistola tua.

direct our attention because it is at the core of Augustine's justification for coercion of the Donatists.

In replying to Cresconius' attempt to distinguish between schism and heresy, Augustine stated:

Accordingly, although I (would) approve of that distinction between schism and heresy by which schism is said to be a recent disagreement of a congregation arising from some difference of judgement, for neither is even a schism able to be made to come about unless those who make it follow something at variance. Heresy, then, is schism grown old.⁴⁸⁸

Here Augustine is probably picking up on the precise wording of one of Cresconius' distinctions between schism and heresy and using it against him. Cresconius, in responding to the imperial legislation of 405 and in making a distinction between schism and heresy, had argued that schism was a recent disagreement of a congregation arising from a difference of judgement – *schisma esse recens congregationis ex aliqua sententiarum diversitate* – but it was not the best distinction to make in a controversy of this length. Of course, Augustine was quick to point out the long-standing nature of the Donatist schism and to argue that by Cresconius' own judgement, the Donatist schism was not a recent difference of judgement, but was rather a *schisma inveteratum*, a schism which had by its stubbornness become a heresy.

One sees this same rationale clearly exemplified in Augustine's *Ep.* 87 to the Donatist Emeritus from 405. In that letter, Augustine writes:

But unless you also hold this position, you all will be just as Optatus was in your communion, since you were not unaware of him. May God keep this from the conduct of Emeritus and such others among you who I have no doubt are far

⁴⁸⁸ c. *Cresc.* 2.7 (my translation). *Proinde quamvis inter schisma et haeresim magis eam distinctionem approbem, qua dicitur schisma esse recens congregationis ex aliqua sententiarum diversitate dissensio (neque enim et schisma fieri potest, nisi diversum aliquid sequantur qui faciunt); haeresis autem, schisma inveteratum ...*

removed from the deeds of that man. *After all, our objection against you is only the crime of schism, which you have also made into heresy by wrongly continuing in it.* But regarding how great this sin is considered in the judgment of God, read the passage I have no doubt that you have read. You will find that Dathan and Abiram were swallowed by the earth's opening up and that all the rest who sided with them were consumed by a fire coming from the midst of them. The Lord God branded that crime with an immediate punishment as an example of what we should avoid in order that, when he spares such sinners with great patience, he might show what sort of punishment he is reserving for the last judgment. Nor do we, after all, blame your arguments if at that time when Optatus is reported to have raged with his pestilential power, when he was accused by the groaning of the whole of Africa with your groans included, at least if you are the sort of person that your reputation declares you to be, something that God knows that I both believe and desire. We do not blame you, if you did not want to excommunicate him at that time for fear that he would drag with him many other excommunicated people and would split your communion with the madness of schism. But this is precisely what condemns you, Brother Emeritus: Though you saw that it is so great an evil that the sect of Donatus be divided that you thought that Optatus should be tolerated in your communion rather than that such a split

be accepted, you remain in that evil that was committed by your predecessors in dividing the Church of Christ.⁴⁸⁹

Augustine's decision to categorize the Donatists as heretics is a critical aspect of his determination to support coercion of them. Here, we see his justification to Emeritus that by stubbornly persisting in schism the Donatists had become a heresy and were like Dathan and Abiram who were swallowed up in the earth. The charge must have sounded familiar to Emeritus, for it is the same charge levied against the Maximianists by the Donatists in the 390s; and it is the closest echo we get for how Augustine's own strategy against the Donatists was following the legal precedents set by them in the 390s. Here is one of Augustine's descriptions of the sentence passed against the Donatists' own schismatic, Maximian, at Bagai in 394:

See what a noise, what a clatter that 'veracious mouth' of your bishops makes – what it professes in that illustrious Council. 'Maximian' – it says – 'a rival to the faith, an adulterer of truth, an enemy of our Mother the Church, a servant of Dathan, Korah, and Abiram – him the thunderbolt of a sentence of condemnation has cast away from the bosom of the Church. And that the earth, yawning open,

⁴⁸⁹ *Ep. 87.4* (tr. Teske, *Letters 1 – 99*, 346; emphasis added). *Sed et vos, nisi hoc sentiatis, tales eritis omnes, qualis Optatus in vestra communione vobis non ignorantibus fuit: quod absit ab Emeriti moribus, aliorumque talium, quales apud vos esse non dubito longe a factis illius alienos. Neque enim vobis obicimus, nisi schismatis crimen, quam etiam haeresim male perseverando fecistis. Quanti autem divino iudicio pendatur hoc facinus, lege quod te legisse non ambigo. Invenies Dathan et Abiron hiatu terrae devoratos, caeterosque omnes, qui eis consenserant, igne de medio eorum existente consumptos. Illud ergo scelus ad exemplum devitandi Dominus Deus praesenti supplicio denotavit, ut cum talibus patientissime parcat, quale ultimo iudicio reservet, ostenderet. Neque enim reprehendimus rationes vestras, si eo tempore quo vesana potentia furere iactabatur Optatus, cum eius accusator esset totius Africae gemitus congemiscentibus vobis, si tamen talis es, qualem te praedicat fama, quod scit Deus me et credere et velle: non ergo reprehendimus si eo tempore, ne multos secum excommunicatos traheret, et communionem vestram schismatis furore praecideret, eum excommunicare nolulistis. Sed hoc ipsum est quod vos arguit in iudicio Dei, frater Emerite, quod cum videretis tam magnum malum esse, dividi partem Donati, ut Optatus potius in communione tolerandus existimaretur, quam illud admitteretur; permanetis in eo malo, quod in dividenda Ecclesia Christi a vestris maioribus perpetratum est.*

has not yet swallowed him up, preserved him for greater punishment above. For if he had been snatched away, he would have gained the punishment that was his due by a short path to destruction. Now he is gathering the interest on a bigger loan, since he is a dead man among the living.’ And so finally, persisting in his schism – as you yourself said – within the period of delay, before they would have returned to your Church – as you yourself likewise said – did they contract no stain at all or only a small one from association with him?

But hear what follows then. Hear, I say, what the composer or speaker of the sentence adds. ‘He is not the only one justly condemned to the death due his crime. For the chain of sacrilege draws a very great number as well into a share of the charge – about whom it is written, “The poison of vipers is on their lips. Their mouth is full of cursing and bitterness. Their feet are swift to pour our blood. Sorrow and unhappiness is in their paths, and they have not known the way of peace.” We would not indeed wish to be cut off from a joint of our own body. But since for the noxious putrescence of an oozing wound cutting off support is more effective than soothing medicines, a course of action more health-giving has been found, lest the unwholesome poison creep through all the members of the body – to cut off the wound that has arisen with a sudden painful blow. Therefore those guilty of that notorious charge – Victorianus of Cebarsussa, Martianus of Sullectum, Miggen of Elephantaria, Praetextatus of Assura, Salvius of Membressa, Valerius of Melzi, Felicianus of Musti, and Martialis of Ad Pertusa, who, by their death-dealing work of destruction gathered together the dregs and pasted together a vessel of filth – but also those sometime clerics of the Church of Carthage who, while they were present at the criminous deed, gave their pimp-like support to the illicit, incestuous act – know that these men have been condemned by the veracious mouth of a General Council and the judgement of the God who presides over it.’

What graver things could you say against them? What graver things are you wont to say against us ourselves? ‘But’ – you say – ‘during the period of

delay they were corrected from this so great an evil.' I'll see whether they were corrected – since they would have been truly corrected if they had returned to the true Church. But if yours is the true Church, tell me how they were purified from so monstrous a crime. For if they were not purified, they are all – according to your judgement – stained by their crime. But if they were purified, you concede that they were able to be purified, because of the love that covers a multitude of sins, by their mere return. And you accuse us with empty and malicious charges about your people when they are corrected and come to us. Unless perhaps, as the words of your Council indicate, they had indeed already committed the sacrilege of schism, but before the end-date of the period of delay that had been granted,

they had not yet been defiled by the same sacrilege and therefore were not reckoned to need purification.⁴⁹⁰

This recategorization of the Donatists from schismatics to heretics in Augustine's justification for coercion has too often been overlooked. As we have seen, one possible reason for that is the lack of an English translation. Another possible reason for its absence from so many of the discussions on coercion is the dismissive assessment of this justification offered by

⁴⁹⁰ c. *Cresc.* 3.22 (my translation). *Attende quid insonet, quid increpet, quid in illo praeclaro concilio fateatur veridicum os illud episcoporum tuorum. 'Maximianum – inquit – fidei aemulum, veritatis adulterum, Ecclesiae matris inimicum, Dathae, Chore, et Abiron ministrum, de pacis gremio sententiae fulmen excussit: et quod adhuc eum dehiscens terra non sorbuit, ad maius supplicium superis reservavit. Raptus enim poenam suam compendio lucraverat funeris: usuras nunc gravioris colligit fenoris, cum mortuus interest vivis'. Itane tandem in huius schismate, sicut ipse dixisti, persistentes, antequam intra tempus dilationis, sicut tu item dixisti, se vestrae Ecclesiae reddidissent, nullam vel parvam de huius societate traxerant maculam? Sed audi deinde quid sequatur; audi, inquam, dictator vel dictor illius sententiae quid connectat. 'Nec hunc solum – inquit – sceleris sui mors iusta condemnat: trahit etiam ad consortium criminis plurimos catena sacrilegii, de quibus scriptum est: Venenum aspidum sub labiis eorum; quorum os maledictione et amaritudine plenum est, veloces pedes eorum ad effundendum sanguinem: contritio et infelicitas in viis eorum, et viam pacis non cognoverunt. Nollemus quidem tamquam e proprii corporis iunctura praecidi; sed quoniam tabescentis vulneris putredo pestifera plus habet in abscissione solaminis, quam in remissione medicaminis, inventa est causa salubrior ne per cuncta membra pestilens irrepat virus ut compendioso dolore natum decidat vulnus. Famosi ergo criminis reos Victorianum Carchabianensem, Martianum Sullectinum, Beianum Beianensem, Salvium Ausafensem, Theodorum Usulensem, Donatum Sabratensem, Miggenem Elephantariensem, Praetextatum Assuritanum, Salvium Membresitanum, Valerium Melzitanum, Felicianum Mustitanum, et Martialem Pertusensem, qui funesto opere perditionis vas sordidum collecta faeculentia glutinarunt; sed et clericos aliquando Ecclesiae Carthaginis, qui dum facinori intersunt, illicito incestui lenocinium praebuerunt, Dei praesidentis arbitrio universalis concilii ore veridico damnatos esse cognoscite'. Quae graviora in illos dicere potuistis? Quae graviora in nos ipsos dicere soletis? 'Sed ab hoc – inquis – tam magno malo intra dilationis tempus correcti sunt'. Videro utrum correcti sint: quia revera correcti essent, si ad veram Ecclesiam remeassent. Sed si vestra vera est, quomodo expiati sint a tam immani scelere, dicite. Si enim non sunt expiati, omnes vos estis secundum vestram sententiam eorum scelere maculati: si autem expiati sunt, solo ipso reditu, propter caritatem quae cooperit multitudinem peccatorum, expiari potuisse conceditis; et nos de vestris cum correcti ad nos veniunt, inanibus calumniis accusatis: nisi forte, iam quidem, sicut concilii verba indicant, et schismatis sacrilegium perpetraverant, sed ante diem concessae dilationis eodem sacrilegio nondum fuerant inquinati, et ideo non putati sunt expiandi.*

W.H.C. Frend. Taking up the statement, ‘*haeresis autem schisma inveteratum*’ from the *contra Cresconium* (2.7) in his *Donatist Church*, Frend quickly put it back down again with the observation that Augustine’s justification for coercion was ‘the view of a bureaucrat’.⁴⁹¹ This study has shown that Frend’s observation was almost correct, but not necessarily for the reasons Frend intended. Frend’s statement seems to imply that Augustine was a frustrated bureaucrat who coerced the Donatists when they resisted his persuasive powers. This thesis has shown that Augustine’s justification for coercion was the view of a lawyer: one with powerful legal precedents at his disposal. For this chapter has shown that Augustine approached the theological categories of schism and heresy mindful of his legal precedents and articulated an understanding of ‘stubborn schism: *schisma inveteratum*’ that could be considered heresy for purposes of the imperial legislation of 392.

Moreover, as we have seen, when Hermanowicz addresses this subject in *Possidius of Calama*, she notes about Augustine’s argument for stubborn schism as heresy that ‘this is new.’ But this study has shown that this assessment is not exactly correct. Rather, in making his argument for a stubborn schism which had turned into a heresy, Augustine departed from the theological treatments of schism and heresy articulated by Opatus and Basil, and returned to the early Church’s ambiguity on the subject: an ambiguity which Augustine had also found in the Donatists’ temporarily effective arguments to imperial officials in the period mid-390s. However, as one might expect with any effective advocate, Augustine found a new way of articulating the equation of schism with heresy, and it was an argument calculated to ensure imperial attention and coercive measures.

The question of schism or heresy as proper categories for the Donatists is one on which we can see real development in Augustine’s thought, but development that was shaped by the imperial anti-heresy legislation of 392 and the Donatists’ own use of that legislation against their schismatics. Writing to the Donatist Maximin, in *Ep.* 23 in 392, Augustine uses the terms

⁴⁹¹ See Frend, *Donatist Church*, 267—68: ‘Previously, in about A.D. 406 Augustine had written four books in reply to the tract of a Donatist layman Cresconius who had written under the inspiration of Petilian’s works. It is in this work that he claimed that heresy was not merely doctrinal error but ‘inveterate schism’ — the view of a bureaucrat.’

‘schism’ and ‘heresy’ somewhat interchangeably, as we see in the following passage where Augustine says:

Let us remove from the center stage those empty objections that are often hurled at one another by ignorant parties. You should not raise as an objection the era of Macarius, nor should I do the same with the violence of the Circumcellions, if this latter problem does not apply to you, nor those earlier events to me. The threshing floor of the Lord has not yet been winnowed; it cannot be free from straw. Let us pray and do as much as we can that we may be the wheat. I cannot be silent about our deacon who was rebaptized, for I know how dangerous for me such silence is. After all, I do not plan to pass my time in the vanity of ecclesiastical honors; rather, I bear in mind that I will give an account to the prince of all pastors about the sheep entrusted to me. If you perhaps do not want me to write these things to you, you must, my brother, pardon my fear. For I fear very much that, if I am silent and pretend nothing is wrong, others will also be rebaptized by you. I have, therefore, determined to pursue this cause to the extent that the Lord offers me the strength and ability, in order that all who are in communion with us may know from our peaceful discussions *how much the Catholic Church differs from heresies and schisms* and how much one should avoid the destruction to come for either the weeds or the branches that have been cut off from the vine of the Lord. If you enter upon this discussion with me willingly so that by our agreement the letters of both of us are read out to our peoples, I shall rejoice with unexpressible joy. But if you do not accept this calmly, what shall I do, brother, even though you are unwilling, but read our letters to the Catholic people in order that they may be better instructed? But if you refuse to reply by letter, I have decided to read at

least my letter in order that, when people recognize your lack of confidence, they may at least be ashamed to be rebaptized.⁴⁹²

But then, the following year, Augustine preached the sermon in Carthage that would come to be the *De Fide et Symbolo* and stated the following about schism and heresy:

And so we believe in a Church which is holy but which is also Catholic. For heretics and schismatics also give the name of churches to their assemblies. But heretics, because of their erroneous doctrines about God, do harm to the faith, while schismatics, through their malicious divisiveness, abandon fraternal charity, despite believing what we believe. For this reason a heretic does not belong to the Church, because he loves God, nor does a schismatic, because he loves his neighbor. Therefore it finds it easy to forgive its neighbor's sins, because it prays to be forgiven by the One who has reconciled us to himself, has wiped out all our past faults and continually calls us to a new life. Until we come to possess this life

⁴⁹² *Ep. 23.6* (tr. Teske, *Letters 1 – 99*, 67; emphasis added). *Tollamus de medio inania obiecta, quae a partibus imperitis iactari contra invicem solent; nec tu obiicias tempora Macariana, nec ego saevitiam Circumcellionum: si hoc ad te non pertinet, nec illud ad me. Area dominica nondum ventilata est; sine paleis esse non potest. Nos oremus, atque agamus quantum possumus, ut frumentum simus. Ego de rebaptizato diacono nostro silere non possum: scio enim quam mihi silentium perniciosum sit. Non enim cogito in ecclesiasticis honoribus tempora ventosa transigere, sed cogito me principi pastorum omnium rationem de commissis ovibus redditurum. Si forte nolles ut haec tibi scriberem, oportet te, frater, ignoscere timori meo. Multum enim timeo ne me tacente et dissimulante, alii quoque rebaptizentur a vobis. Decrevi ergo, quantum vires et facultatem Dominus praebeere dignatur, causam istam sic agere, ut pacificis collationibus nostris omnes qui nobis communicant, noverint ab haeresibus aut schismatibus quantum catholica distet Ecclesia, et quantum sit cavenda perniciēs vel zizaniorum vel praecisorum de vite Domini sarmentorum. Quam collationem mecum si libenti animo susceperis, ut concordibus nobis amborum litterae populis recitentur, ineffabili exultabo laetitia. Si autem id aequo animo non accipis, quid faciam, frater, nisi ut te quoque invito epistolas nostras populo catholico legam, quo esse possit instructor? Quod si rescribere dignatus non fueris, vel meas legere decrevi, ut saltem diffidentia vestra cognita rebaptizari erubescant.*

in its full perfection, it is not possible for us to remain without sin, yet the kind of sins we commit makes a difference.⁴⁹³

Here we can see Augustine making a fairly clear distinction between heresy and schism in 393, one that is consistent with the theological distinctions drawn by Opatus and Basil. At the same time, the Donatists had not yet begun to argue for the imposition of the anti-heresy legislation of 392 against their own schismatics.

Writing to Alypius in *Ep.* 29 in 395, Augustine describes being constrained to preach by Valerius in Hippo and hearing the noises from what he terms the ‘church of the heretics’ (*haereticorum basilica*) nearby. The full passage reads:

In the afternoon a larger crowd was present than in the morning, and up to the hour at which we came out with the bishop, readings alternated with psalms. After we came out, two psalms were read. Then, though I was reluctant, since I now wanted so perilous a day to be over with, old Valerius forced me under an order to say something to them. I gave a short sermon in which I thanked God. And since we heard that the customary banquets were being celebrated by the heretics in their basilica, for they were still drinking at the very time when we were doing this, I said that the beauty of the day stands out in comparison with the night and that the color white is more pleasing by reason of its nearness to black. So too, our gathering with its spiritual celebration would perhaps have been less pleasing if the carnal binge did not stand in contrast with it, and I exhorted them constantly to desire such feasts as ours if they had tasted how sweet the Lord is. I warned that those who pursue as primary what will at some point perish must be afraid, since each of us becomes a companion of what he loves, and the apostle mocked such people when he said, *Their god is their belly*, for the same apostle said in

⁴⁹³ Augustine, *De fide et symbolo*, 10.21 (‘Faith and the Creed’, tr. Michael G. Campbell, in Augustine, *On Christian Belief*, The Works of Saint Augustine, A Translation for the 21st Century, ed. John E. Rotelle, I/8, 149—74, at 171).

another passage, *Food is for the belly, and the belly for food, but God will destroy both the one and the other*. Therefore, we must follow what is not destroyed, but what is kept most distant from the longing of the flesh by the sanctification of the Spirit. And after I had said what the Lord was so good as to suggest along those lines for the time, vespers, which are daily celebrated, were completed, and as we left with the bishop, the brothers sang a hymn, with no small crowd of both men and women remaining and singing until the darkness fell.⁴⁹⁴

Examples such as these could be multiplied at length. It is a point at which we can see continuing development in Augustine's thought for a long period of time. Writing about the Donatists in the *De Haeresibus* towards the end of his life (428/429), Augustine states the following about the Donatists: '*pertinaci dissensione firmata, in haeresim schisma verterunt*'; 'when their stubborn dissent had grown strong, they turned their schism into heresy'.⁴⁹⁵ By the time that Augustine was writing *De Haeresibus*, he had also decided to categorize other groups

⁴⁹⁴ *Ep. 29.11. Pomeridiano autem die, maior quam ante meridiem affuit multitudo, et usque ad horam qua cum episcopo egredieremur, legebatur alternatim et psallebatur; nobisque egressis duo psalmi lecti sunt. Deinde me invitum, qui iam cupiebam peractum esse tam periculosum diem, iussum compulit senex ut aliquid eis loquerer. Habui brevem sermonem, quo gratias agerem Deo. Et quoniam in haereticorum basilica audiebamur ab eis solita convivia celebrata, cum adhuc, etiam eo ipso tempore quo a nobis ista gerebantur, illi in poculis perdurarent, dixi diei pulchritudinem noctis comparatione decorari, et colorem candidum nigri vicinitate gratiores; ita nostrum spiritualis celebrationis conventum minus fortasse futurum fuisse iucundum, nisi ex alia parte carnalis ingurgitatio conferretur; hortatusque sum ut tales epulas instanter appeterent, si gustassent quam suavis est Dominus; illis autem esse metuendum, qui tanquam primum sectantur quod aliquando destruetur, cum quisque comes efficiatur eius rei quam colit, insultaritque Apostolus talibus dicens: quorum Deus venter, cum idem alio loco dixerit: Esca ventri et venter escis; Deus autem et hunc et illas evacuabit. Nos proinde oportere id sequi quod non evacuatur, quod remotissimum a carnis affectu spiritus sanctificatione retinetur; atque in hanc sententiam, pro tempore, cum ea quae Dominus suggerere dignatus est dicta essent, acta sunt vespertina quae quotidie solent, nobisque cum episcopo recedentibus, fratres eodem loco hymnum dixerunt, non parva multitudine utriusque sexus usque ad obscuratum diem manente atque psallente.*

⁴⁹⁵ *De Haeresibus*, 69.1. On the date and occasion of the work, see Teske, introduction to 'Heresies', in *Arianism and Other Heresies*, 15—16. Cf. Jerome, *Ep. ad Tit.* 3.

that had been known as schismatics as heretics, including the Novatians,⁴⁹⁶ Tertullianists,⁴⁹⁷ and Meletians.⁴⁹⁸ However, Augustine also prefaces his work on heresy by noting just how difficult it is to define a heresy⁴⁹⁹ – a point with which an imperial proconsul hearing these arguments might have felt agreement. It is this development in Augustine’s legal recategorization of the Donatists from schismatics to heretics that deserves much greater scholarly attention in studies of Augustine and coercion. For it can be argued that Augustine had long supported coercion of heretics, and once he had definitively categorized the Donatists as heretics, the decision to support coercive measures flowed naturally from that earlier legal recategorization. All of which causes us to see one of the most interesting aspects of the Donatist controversy: the extent to which the imperial anti-heresy legislation of 392 guided the theological discussions about schism and heresy in the 390s and early 400s. We also see how on this significant point of theology it was the Theodosian legislation which had led the way.

⁴⁹⁶ *De Haeresibus*, 38.

⁴⁹⁷ *De Haeresibus*, 86—87.

⁴⁹⁸ *De Haeresibus*, 48.

⁴⁹⁹ *De Haeresibus*, Preface, 7: ‘After all, not every error is a heresy; yet, since every heresy involves a defect, a heresy could only be a heresy by reason of some error. What it is, then, that makes one a heretic, in my opinion, either cannot at all, or can only with difficulty, be grasped in a definition in accord with the rules. This point will be explained in the course of this work, if God guides and brings my plan to the goal I intend. But in its own place we must look into and state the value of this investigation, even if we cannot grasp how a heretic should be defined. After all, who would not see its great value, if we could grasp it?’ (tr. Teske, *Arianism and Other Heresies*, 33).

CONCLUSION

A few years after the imperial legislation of 405, Augustine wrote to Vincentius and reflected on his change of mind about coercion of the Donatists:

I yielded, therefore, to these examples, which my colleagues proposed to me. For my opinion originally was that no one should be forced to the unity of Christ, but that we should act with words, fight with arguments, and conquer by reason. Otherwise, we might have as false Catholics those whom we had known to be obvious heretics. But this opinion of mine was defeated, not by the words of its opponents, but by examples of those who offered proof. For the first argument against me was my own city. Though it was entirely in the Donatist sect, it was converted to the Catholic unity out of fear of the imperial laws, and we now see that it detests the destructiveness of this stubbornness of yours so that no one would believe that it was ever a part of it. And it was the same with many other cities, which were reported to me by name, so that I might recognize by the very facts that one could correctly understand the words of scripture as also applying to this case, *Give a wise man a chance, and he will become wiser*. For how many, as we know for certain, already wanted to be Catholics, because they were convinced by the clearest truth, but because they feared offending their own people, they daily postponed doing so! How many were bound, not by the truth, in which you never had much confidence, but by the heavy chain of inveterate habit, so that those words of God were fulfilled in them, *A difficult servant will not be corrected by words, for, even if he understands, he will not obey*! How many thought that the true Church was the sect of Donatus because security made them uninterested, reluctant, and lazy to gain knowledge of the Catholic truth! For how many did the rumors of slanderers close the entrance way when they spread it about that we offer something else on the altar of God! How many believed that it made no difference on which side one is a Christian and,

therefore, remained on the side of Donatus, because they were born there, and no one forced them to leave it and cross over to the Catholic side!⁵⁰⁰

The question about a change of mind on coercion in Augustine has occupied scholars concerned with problems of coercion and religiously motivated violence for quite some time. A passage such as the one cited above has often played a prominent role in those discussions: most influentially in the work of Peter Brown and Émilien Lamirande. However, certain critical details in the juridical context for what Augustine reported about his famous change of mind have often been overlooked in these treatments. Largely, that has been due to the fact that, as we have seen, the focus of such examinations has been first on Augustine's significant influence on subsequent generations on this issue. As a preliminary matter, the most important justifications for coercion offered by Augustine were in the context of his response to the Donatists. However, as Maureen Tilley observed, far too many examinations of Donatism in relation to Augustine have treated the Donatists as a 'foil for Augustine' rather than first treating the Donatists on their own terms in

⁵⁰⁰ *Ep. 93.5.17* (tr. Teske, *Letters 1 – 99*, 387—8). *His ergo exemplis a collegis meis mihi propositis cessi. Nam mea primitus sententia non erat, nisi neminem ad unitatem Christi esse cogendum; verbo esse agendum, disputatione pugnandum, ratione vincendum, ne fictos catholicos haberemus, quos apertos haereticos noveramus. Sed haec opinio mea, non contradicentium verbis, sed demonstrantium superabatur exemplis. Nam primo mihi opponebatur civitas mea, quae cum tota esset in parte Donati, ad unitatem catholicam timore legum imperialium conversa est; quam nunc videmus ita huius vestrae animositatis perniciem detestari, ut in ea numquam fuisse credatur. Ita aliae multae, quae mihi nominatim commemorabantur, ut ipsis rebus agnoscerem etiam in hac causa recte intellegi posse quod scriptum est: Da sapienti occasionem, et sapientior erit. Quam multi enim, quod certo scimus, iam volebant esse catholici, manifestissima veritate commoti, et offensionem suorum reverendo, quotidie differebant! Quam multos non veritas, in qua numquam praesumpsistis, sed obduratae consuetudinis grave vinculum colligabat, ut in eis compleretur divina illa sententia: Verbis non emendabitur servus durus; si enim et intellexerit, non obediet! Quam multi propterea putabant veram Ecclesiam esse partem Donati, quia eos ad cognoscendam catholicam veritatem securitas torpidos, fastidiosos, pigrosque faciebat! Quam multis aditum intrandi obserabant rumores maledicorum, qui nescio quid aliud nos in altare Dei ponere iactitabant! Quam multi nihil interesse credentes in qua quisque parte christianus sit, ideo permanebant in parte Donati, quia ibi nati erant, et eos inde discedere atque ad Catholicam nemo transire cogeabat!*

their own contexts.⁵⁰¹ Moreover, many such earlier studies have often taken as their starting place the goal of winning over disparaging critics of Augustine whom Peter Brown termed ‘religious liberals’ who saw in Augustine, ‘le prince et patriarche des persécuteurs.’⁵⁰² Scholarly explanations of Augustine on coercion which take as their starting point Augustine’s influence on later justifications of coercion can lose sight of Augustine’s own influences when he set out to justify the coercion of the Donatists.

It must be acknowledged that many of the theological treatments on the moral permissibility of coercion are necessary and proper; however, this is not one of those studies. The task of this thesis has been more modest and bounded by the best legal evidence. The normal mode of treatments in this vein is to look first at the sixteen centuries of Augustine’s influence on the matter of coercion, and then turn back to Augustine as a precedent. Conversely, this thesis has looked at Augustine’s own North African juridical precedents first and then turned forward to look at Augustine’s juridical justifications for coercion.

What we find when we order our methodology in this way is that Augustine did not actually change his mind on the moral permissibility of coercion when he supported the imperial anti-Donatist legislation of February of 405. In the passage quoted above, Augustine tells Vincentius that he changed his mind only when he saw Donatists being brought back to the Catholic communion pursuant to the imperial laws. However, as we have seen in Chapters two, four, and five of this thesis, which themselves follow and carry forward Erika Hermanowicz’s excellent treatment, the situation is rather more complicated. Firstly, the evidence shows that Augustine was actively lobbying for those coercive measures long before they were enacted in 405. Moreover, as Hermanowicz has demonstrated, Augustine was already threatening the Donatists with coercive penalties in the late 390s. Further, Augustine’s own writings from the late 390s leave little room to think that he was categorically opposed to the coercion of heretics or pagans by the late 390s when he praised imperial measures against pagans and heretics. This leaves us to wonder: did Augustine change his mind on coercion of the Donatists at all?

⁵⁰¹ Tilley, ‘Redefining Donatism’, 22—3.

⁵⁰² Brown, ‘St. Augustine’s Attitude’, 107.

By looking at Augustine's juridical context, this study has allowed us to answer that question in the affirmative. However, the point on which Augustine changed his mind has been reconsidered by this study. As we have seen, it was the imperial anti-heresy legislation which had shaped and organized the contours of Augustine's thought on coercion by the early 390s. Thus, the point on which Augustine began to have a change of mind, the sort of change of mind that he reports to Vincentius, was on the precise legal category into which to place the Donatist Church. What this study has shown is that Augustine did not so much change his mind on the moral permissibility of coercion against heretics and pagans; rather, he changed his mind on its practical advisability and feasibility in the case of the Donatist schism. More particularly, what this study has shown is that in the late 390s and early 400s, Augustine began to see the Donatist schismatics as members of a heretical body: a group for whom he had already long supported coercion.

The examination conducted by this thesis allows us to see that Augustine's juridical context, one in which there were coercive imperial laws against heretics, one in which those coercive laws had already been applied against the Donatists' own schismatics, was the particular one in which Augustine was pushed to depart from the clear distinctions between schism and heresy articulated by Optatus and to return to the early Christian Church's prior ambivalence on the terms.

Points such as these which become evident in our reading of *Ep.* 93 would remain opaque without the juridical lens provided by this study. Thus, when Augustine says to Vincentius that he initially thought that the Donatists should be won over by words, such is the strategy that we have seen him employ against the Donatists in Chapter three, where he sought to ensure the greatest degree of compliance from the Donatists with the least degree of imperial force – a tactic which we saw him utilizing as early as 398 in his letter to Alypius regarding the 'Arian' appeal to Donatus after Serdica. When Augustine tells Vincentius that he was concerned about Donatist heretics infiltrating the true church with false conversions, we see in Augustine the concern that he finally resolved in 405/406 when he fully articulated a juridical category for the Donatists that was driven both by his concerns to keep the Donatists firmly under the imperial coercive measures of February 405 and at the same time not to label them as full heretics, but rather

members of an inveterate schism that had turned into a heresy. An echo of this can be heard in his statement to Vincentius that certain Donatists had been held back by the heavy chains of inveterate custom. It was an old notion going back to Cyprian that when it came to the complicated matters of schism and heresy, one might turn into the other. Augustine had good theological precedents. More importantly, he had excellent legal precedents in the juridical appeals of the Donatists themselves, for, as Augustine knew from his study of the legal records, the Donatists had appealed for coercion of their own schismatics in the 390s.

What did Augustine change his mind on, then? This thesis has argued that scholarly debates about a change of mind on the moral permissibility of coercion have largely overlooked the place that the imperial anti-heresy legislation and the Donatists' own juridical appeals held in Augustine's justification for coercion. When those elements are added to the discussion, as this thesis has sought to do, we must answer that question as follows: Augustine changed his mind on the proper legal category for the Donatists, moving them from the category of schism into a hybrid legal category. In doing so, he categorized them as just heretical enough to be coerced by Theodosius' law of 392 which condemned *haereticis erroribus*, but not so much that their coercion would result in bloody repressions of those like Macarius. It was a judicial strategy: one an advocate might employ in finding and then applying an ambiguous law and legal precedents to a new juridical context; one a judge might employ in awarding penalties against a defendant in a manner designed to ensure compliance with a minimum of resentment. It is at this point that Augustine's observations to Vincentius in *Ep.* 93, when read through a juridical lens, cause us to see the ultimate justification offered by Augustine for the coercion of the Donatists. It was not that he had earlier opposed coercion in the 390s but then suddenly supported it sometime in the 400s after the imperial officials began coercing the Donatists. Rather, this study has shown that it was that effectiveness of the methods for bringing the Donatists back into the Catholic communion that Augustine emphasized. Augustine's justification was that coercion had worked. It is a point any legal advocate would emphasize; it would be a success for any judge ensuring compliance from a defendant. Its complicated legacy has troubled many: but then, as promised, the question of whether Augustine's justification was itself justifiable will not be taken up in this thesis.

Except, perhaps, to note one point on which this study bears: how utterly unoriginal Augustine's justification really was. When one looks at Augustine's defense of coercion to Vincentius in *Ep.* 93, one sees the repeated refrain that what he justified was nothing new, but rather something that the Donatists themselves had done, and now were suffering a penalty for their failure. When Augustine describes the 'calumnies of slanderers' to Vincentius, we get a glimpse into one of the most important legal arguments made by Augustine: the critical importance of which in Augustine's own works has been only matched by its near total absence from the scholarship on Augustine. Augustine's case against the Donatists was a legal one, premised on the idea that the Donatists were *calumniatores* who had lied in their juridical appeals, starting with the initial appeal to Constantine and at a number of points since that time.

In the passage directly preceding the one cited, Augustine states:

We see that, not these or those human beings, but many cities were Donatist and are now Catholic, and they intensely hate the diabolical division and ardently desire unity. They, nonetheless, became Catholic on the occasion of this fear, at which you are displeased, through the laws of the emperor, from Constantine, before whom your people first accused Caecilian on their own initiative, up to the present emperors, who decreed that the judgment of that man whom your predecessors chose, whom they preferred to the bishops as judges, should be most justly observed against you.⁵⁰³

A critical examination of the Donatists' appeals does not leave one in a position to determine the veracity of the Donatists' claims against Mensurius or other Catholic leaders. As has been noted, the juridical records are far too questionable for that to be a productive question

⁵⁰³ *Ep.* 93.5.16. (tr. Teske, *Letters 1 – 99*, 387); *Non illos aut illos homines, sed multas civitates videmus fuisse donatistas, nunc esse catholicas, detestari vehementer diabolicam separationem, diligere ardens unitatem: quae tamen timoris huius qui tibi displicet occasionibus, catholicae factae sunt per leges imperatorum, a Constantino apud quem primum vestri ultro Caecilianum accusaverunt, usque ad praesentes imperatores, qui iudicium illius quem vestri elegerunt, quem iudiciis episcopis praetulerunt, iustissime contra vos custodiendum esse decernunt.*

at this point. Instead, the evidence shows us that the Donatists did in fact make these appeals, and did repeatedly go to imperial authorities for assistance during the whole course of the controversy. The evidence demonstrates that Augustine's case against the Donatists was a legal defense to what Augustine argued was a long-standing lawsuit: one in which the plaintiff had lied to the judge and was being punished as a *calumniator*. We saw this tactic on display in force in Chapter four in Augustine's legal argument to Marcellinus for considering the Donatists the plaintiffs at the Conference of 411 on the basis of their appeal to Constantine. The fact that Augustine repeats these polemical points about the Donatist appeals constantly in his polemic is not because he was unable to make 'much progress' with them, as Frend dismissively claimed. Rather, it is because he was making a great deal of progress, and this thesis has shown that the progress Augustine made with the Donatists' appeals was premised on the fact that amidst a sea of otherwise controvertible evidence, the Donatists could not contest that they had repeatedly appealed for imperial assistance.

All of this leaves us with a new starting point for further scholarly treatments of the Donatists themselves and their place in the development of justifications for coercion in their North African context. The conclusions arising from ordering our analysis in this manner are at times disconcerting, for they push against earlier scholarly assumptions that one can find in the North African Donatist Church a principled reluctance to entangle itself in the juridical mechanisms of imperial power. Or, that we can find in the Donatist Church, as Frend and Tilley so influentially argued, a principled notion of the state and worldly powers as antichrist.

What we find instead is rather more complicated and yet rather more interesting at the same time. What we discover in the Donatist Church is an ecclesiastical party that was willing to appeal to the imperial authorities throughout the whole course of the controversy. Of course, the Donatists also protested Rome as antichrist, as has been shown elsewhere, but this study has now, for the first time, placed those protests into their juridical contexts and has shown that the Donatist allegations of Rome as antichrist were made in a broader juridical context where the Donatists had first appealed to the same authority they later labeled as antichrist when it did not support them. None of which would have struck a late Roman legal advocate as out of the ordinary, even if it does challenge certain readings of the Donatists' political theology by modern

theologians. Indeed, the second-century interpreter of dreams, Artemidorus, well summarized the legal risks involved in bringing juridical cases when he offered the following advice to litigants in lawsuits: if they dreamed of walking on the sea they would be likely to prevail in their lawsuit, because, according to Artemidorus, the sea ‘resembles a judge, since it treats some people well and others badly’.⁵⁰⁴ A careful examination of the Donatists’ juridical appeals confirms Artemidorus’ intuition, for we see how unpredictable were the outcomes arising from their numerous juridical appeals. By appealing to imperial authorities, the Donatists’ leadership accepted those legal risks with a full awareness of how unpredictable Late Roman imperial responses to appeals could be.

The results of this study demonstrate that Donatists appealed to Constantine in 313 on a matter of ecclesiastical property and found their community forcibly repressed by imperial soldiers. The Donatist leadership appealed to Taurinus in about the year 340 against the circumcellions and created the first splintering in their ranks between certain of their pragmatic leaders and some of the more radical Donatist clergy. Donatus appealed to Constans in 346 on an apparently straight-forward matter of ecclesiastical seniority and found himself banished, many of his followers slain, and his church repressed and outlawed. The Eastern ‘Arian’ party appealed to Donatus and found its appeal being used against the Donatists five decades later by Augustine. The Donatist party appealed to Julian in 362 and received a favorable response, only to have their appeal posted up throughout North Africa in 405 alongside the imperial Edict of Unity repressing their community (*CTh.* 16.5.37). The Donatists’ successful appeals to Firmus and Gildo assisted them in repressing their own Rogatist and Maximianist schismatics, but then gave aid to later Catholic attempts to identify the Donatists with imperial usurpers for a nervous imperial court in Ravenna. Moreover, the Donatists’ strategy of legally categorizing their own schismatic Maximianists as heretics in arguments made to imperial magistrates in the 390s resulted in those same tactics being taken over and used against them by Augustine and the Catholic party.

⁵⁰⁴ Artemidorus, *Oneirocritica* 3.16 (Artemidorus Daldianus, *The Interpretation of Dreams*, tr. R.J. White, Noyes Classical Studies (Park Ridge, NJ: Noyes, 1975), 163).

This study has demonstrated how unpredictable the outcomes could be for all parties involved. The unnamed proconsul who ruled in favor of the Catholic party in finding the Donatist Crispinus a heretic was himself initially fined the ten pounds of gold when he failed to carry out the sentence against Crispinus. Augustine and the Catholic party who had relied on the support of Stilicho and had used concerns about the Eastern Empire and ‘barbarian’ Goths found themselves forced to renegotiate their position *vis-à-vis* Honorius’ court when Stilicho was executed in 408. The Catholic appeal to Honorius in 410 gave the Donatists an argument for a procedural determination of *personae* at the Conference of 411 that the Catholic party was the plaintiff in the case. The Donatists might have made a request to Honorius to relax the laws in 406, but then found the story of that request being used against them to thwart their request for an identification of *personae* at Carthage in 411. All of which reflects the vagaries of litigation in the ancient world.

As shown in Appendix 1, there are too many Donatist appeals for any one of them to be dismissed as an outlier from the Donatists’ broader political theology. The appeals are made in too many different contexts and directed to too many audiences to be dismissed as dependent on one period of the life of the Donatist community or one particular relationship between the Donatists and one emperor, magistrate, or proconsul. Moreover, the Donatist appeals are one of the few aspects of the controversy for which the authenticity of the evidence was largely undisputed by the Donatists themselves. With the exception of the Donatist appeal of 406 and the Catholic allegations about Donatist alliances with imperial usurpers, the Donatists were unable to meaningfully contest the evidence for these appeals when it was offered against them by Augustine and the Catholic party. This is especially true of the initial Donatist appeal to Constantine in 313, which was used decisively by the Catholic party at 411 as part of its innovative legal argument for seeing the entire controversy as part of a long-running lawsuit.

The juridical significance of the evidence for the Donatist appeals explains why Augustine focused on this evidence: because the appeals were irrefutable amidst a sea of otherwise dubious evidence. In that respect, this study has shown Augustine’s legal acumen on full display in the manner in which he took these pieces of evidence and used them to ground the remainder of his anti-Donatist polemic. In particular, this thesis has shown that when Augustine

asked, ‘why do you object to our doing that which your own party first presumed to do?’ (*Ep.* 93.4.13), he had good juridical grounds to do so, namely, the Roman legal principle of *calumnia* which punished the making of false claims. Thus, Augustine’s repeated refrain that the Donatists were *calumniatores* was part of his broader legal strategy of arguing that the Donatists had invoked imperial laws and then had seen those same laws turned against them. Thus, in Augustine’s telling, the persecution claimed by the Donatists was actually the inexorable consequence of the Donatists’ juridical appeal to the imperial authorities.

In conclusion, Maureen Tilley has shown how much of the Donatists’ self-identity as the church of the martyrs was shaped by their exegesis and application of scripture.⁵⁰⁵ A particular favorite of Donatist exegetes was the Biblical story from the book of Daniel about Daniel and his three friends, Shadrach, Mishach, and Abednego, who bravely faced the Babylonian king Nebuchadnezzar and the king’s attempts to force them to deny their God.⁵⁰⁶ In the Donatist account, the Catholics and their imperial allies were cast as the latest in a long line of persecutors, eager to throw God’s righteous people to the lions or into a fiery furnace.⁵⁰⁷ But the Donatists were not alone in their utilization of the book of Daniel as a polemical model. Augustine also used the same story: only, as one might expect, to a very different end. Augustine’s retelling of the story of Daniel maps out nicely the broader argument of this thesis about how Augustine took the Donatists’ own story and then retold it. In Augustine’s retelling of the story of Daniel, the Donatists were not Daniel’s brave friends, but rather the persecuting king’s malicious informers who sought the destruction of God’s people, only to face the same punishments themselves that they had prepared for their enemies.

Later in the same letter to Vincentius that was cited above, Augustine stated:

⁵⁰⁵ See, for example, Tilley, *Bible*, 65, 171—174.

⁵⁰⁶ Cf. Daniel 3 and 6.

⁵⁰⁷ The *Passion of Saints Maxima, Donatilla and Secunda* exemplifies the Donatist use of this motif of God’s servants standing fast against an evil and persecuting ruler who attempts to force them to sacrifice to an idol. See Tilley, *Donatist Martyr Stories*, 13—24. See also, Tilley, *Bible*, 67.

Your predecessors denounced Caecilian and his companions to the kings of the earth to be punished for crimes that were not true. Let the lions turn around to crush the bones of the slanderers, and let not Daniel himself, who was proven innocent and set free from the lions' pit where they are perishing, intercede for them. After all, one who prepares a pit for his neighbor will himself fall into it with greater justice.⁵⁰⁸

Earlier, writing to the Donatist grammarian Cresconius, Augustine had likewise stated: It was your ancestors who first brought this case before the tribunal of the emperor. They were the first to accuse Caecilian and his consecrator to the emperor. They were the first to persecute Caecilian and his friends before the emperor. And now you incite the greatest ill-will against us, as seems good to you, because in your defeat you suffer what you would have done to us if you had been victorious – as if those who, when Daniel, the innocent one, had been set free, were themselves devoured by those same lions, were to want to bring charges against him.⁵⁰⁹

Writing about all this to Boniface in 418, Augustine reported:

For the same thing happened to the Donatists as happened to the accusers of holy Daniel. For, just as the lions were turned against those men, so the laws by which the Donatists wanted to destroy the innocent Caecilian have been turned against them. But by the mercy of Christ these laws, which seem to be against them, are

⁵⁰⁸ *Ep. 93.5.19* (tr. Teske, *Letters 1 – 99*, 389); *Maiores vestri Caecilianum et socios eius regibus terrae puniendos falsis criminibus obiecerunt; convertantur leones ad comminuenda ossa calumniantium, nec Daniel ipse intercedat, innocens comprobatus, et de lacu quo illi pereunt liberatus: qui enim parat proximo suo foveam, ipse iustius cadet in eam.*

⁵⁰⁹ *c. Cresc. 3.67* (my translation); *quod primi maiores vestri ad imperatorem causam istam detulerunt, primi apud imperatorem Caecilianum et eius ordinatorem accusaverunt, primi apud imperatorem Caecilianum et eius socios persecuti sunt. Unde nobis, sicut vobis videtur, gravissimam concitatis invidiam, quia victi patimini quod victores utique faceretis, velut si Danihelem criminari vellent, qui illo innocente liberato ipsi ab eis leonibus consumpti sunt.*

rather in their favor since many Donatists have been corrected by them and are being corrected each day, and they give thanks that they have been corrected and set free from that mad destruction. And those who hated the laws now love them, and the more they hated the laws in their insanity, the more they are thankful, once they have recovered their health, that the laws so very conducive to their salvation were harsh toward them. And they are aroused by a similar love along with us for the others with whom they had been perishing. Hence, they strive equally with us in order that the others may not perish.⁵¹⁰

This thesis has not been about the veracity of Augustine's claim that 'the laws which seemed hostile to them are rather on their side'. That is a different question entirely, and one for which Augustine's sincerity would become the focal point instead of the aspects of this controversy for which we have good evidence. Rather, this thesis has been about Augustine's own truest friends in his juridical case against the Donatists, namely the indisputable evidence for the Donatists' juridical appeals. In passages such as those cited above, we get a glimpse into the broader argument of this thesis: that the Donatists had repeatedly gone to Roman officials with a story, and that Augustine took those attempts and rewrote the story of Donatism by turning their own appeals against them and thereby vitiating their claims to purity. For, in Augustine's polemic, the indisputable evidence for the Donatists' appeals meant that the Donatists were no longer a party of the pure, they were a party of failed persecutors, receiving their just rewards as *calumniatores* under Roman law for their own unsuccessful attempts to persecute God's people. It is outside the scope of this thesis whether such a tactic of Augustine's

⁵¹⁰ *Ep.* 185.2.7 (tr. Teske, *Letters 156 – 210*, 183); *Hoc enim contigit Donatistis, quod accusatoribus sancti Danielis. Sicut enim in illos leones, sic in istos conversae sunt leges quibus innocentem opprimere voluerunt; nisi quod propter misericordiam Christi, magis pro eis sunt istae leges, quae illis videntur adversae: quoniam multi per illas correcti sunt, et quotidie corriguntur; et se esse correctos, atque ab illa furiosa pernicie liberatos gratias agunt. Et qui oderant diligunt, molestasque sibi fuisse saluberrimas leges, quantum in insania detestabantur, tantum recepta sanitate gratulantur; et in residuos, cum quibus fuerant perituri, iam simili dilectione nobiscum, ut pariter instemus ne illi pereant, excitantur.* It is an interesting comparison with *Ep.* 93.5.19 because here (*Ep.* 185.2.7) the punishment is actually beneficial.

was morally justifiable. Instead, the argument made by this thesis is that Augustine's strategy succeeded; and that the reasons for its effectiveness in Augustine's particular North African juridical context have been too long overlooked by scholars. It is hoped that future studies of Donatism and Augustine's posture on coercion will give more weight to the Donatists' appeals, both for purposes of understanding the Donatist posture towards Roman power on its own terms and for discerning the place the appeals held in Augustine's anti-Donatist polemic and justification for coercion. It was in Augustine's use of the appeals that one important and overlooked aspect of this North African ecclesiastical conflict becomes most evident — the laws that both parties appealed to in the controversy, like Daniel's lions, had juridical teeth. Which leads us to answer Donatus of Carthage's famous question: 'What has the emperor to do with the church?' with the answer Augustine and indeed any other late Roman advocates might have given: 'When one has repeatedly appealed to that emperor, a great deal indeed.'

BIBLIOGRAPHY

I. Primary sources

I.1. Augustine

Augustinus, *Ad Cresconium – An Cresconius*, ed. and tr. Hermann Joseph Sieben, Augustinus Opera – Werke 30 (Paderborn: Ferdinand Schöningh, 2014).

Augustine, *Arianism and Other Heresies*, tr. Roland Teske, The Works of Saint Augustine, A New Translation for the 21st Century, ed. John E. Rotelle, I/18 (Hyde Park, NY: New City Press, 1995).

Augustinus, *Breviculus conlationis*, in *Gesta conlationis Carthaginensis, anno 411, accedit Sancti Augustini breviculus conlationis*, ed. Serge Lancel, CCSL 149A (Turnhout: Brepols, 1974), 259—306.

Augustine, *De fide et symbolo*, 10.21 ('Faith and the Creed', tr. Michael G. Campbell, in Augustine, *On Christian Belief*, The Works of Saint Augustine, A Translation for the 21st Century, ed. John E. Rotelle, I/8, 149—74.

Sancti Aureli Augustini *Enarrationes in Psalmos*, revised [from Maurist edn] E. Dekkers and J. Fraipont, 3 vols, CCSL 38—40 (Turnhout: Brepols, 1956).

Sancti Aureli Augustini Hipponiensis Episcopi Epistulae, ed. Alois Goldbacher, 5 vols, CSEL 34.1—2, 44, 57—58 (Vienna: F. Tempsky, 1895—1923).

Augustine, *Homilies on the Gospel of John 1—40*, tr. Edmund Hill with introduction by Alan Fitzgerald, The Works of Saint Augustine, A Translation for the 21st Century, I/12 (Hyde Park, NY: New City Press, 2009).

Augustine, *Letters 1 — 99*, tr. Roland Teske, The Works of Saint Augustine, A New Translation for the 21st Century, ed. John E. Rotelle, II/1 (Hyde Park, NY: New City Press, 2001).

Augustine, *Letters 100 — 155*, tr. Roland Teske, The Works of Saint Augustine, A New Translation for the 21st Century, ed. John E. Rotelle, II/2 (Hyde Park, NY: New City Press, 2003).

Augustine, *Letters 156 — 210*, tr. Roland Teske, The Works of Saint Augustine, A New Translation for the 21st Century, ed. John E. Rotelle, II/3 (Hyde Park, NY: New City Press, 2004).

Augustine, *Letters 211 — 270, 1* -- 29**, tr. Roland Teske, The Works of Saint Augustine, A New Translation for the 21st Century, ed. John E. Rotelle, II/4 (Hyde Park, NY: New City Press, 2005).

Sancti Aureli Augustini *Retractationum libri duo*, ed. Pius Knöll, CSEL 36 (Vienna: F. Tempsky, 1902).

Augustine, *Revisions (Retractationes), including an appendix with the Indiculus of Possidius*, tr. Boniface Ramsey, *The Works of Saint Augustine, A New Translation for the 21st Century*, ed. John E. Rotelle, I/2 (Hyde Park, NY: New City Press, 2010).

Sancti Aureli Augustini *scripta contra Donatistas*, ed. M. Petschenig, 3 vols., CSEL 51—53 (Vienna: F. Tempsky, 1908—10).

Augustine, *Sermons (148—183) on the New Testament*, tr. Edmund Hill, *The Works of Saint Augustine, A New Translation for the 21st Century*, ed. John E. Rotelle, III/5 (Hyde Park, NY: New City Press, 1992).

Augustine, *Tractates on the Gospel of John, 1—10*, tr. John W. Rettig, *Fathers of the Church* 78 (Washington: Catholic University of America Press, 1988).

Sancti Aureli Augustini *Tractatus in Johannis Evangelium tractatus CXXIV*, ed. R. Willems, CCSL 36 (Turnhout: Brepols, 1954).

Augustine, *Traites anti-Donatistes IV: Réponse à Cresconius, grammairien et donatiste; Livre sur l'unique baptême*, ed. G. Finaert and A.-C. De Veer, *Bibliothèque Augustinienne* 31 (Paris: Desclée de Brouwer, 1968).

Augustin, *Vingt-six Sermons au Peuple d'Afrique*, ed. François Dolbeau (Paris: Institut d'Etudes Augustiniennes, 1996).

Note: quotations from Augustine not specifically cited from one of the editions above are from the Maurist text of 1679—1700, lightly revised Paris: Gaume fratres, 1836—9, 11 vols in 22, and thence reprinted in Migne, PL 32—47.

I.2. Other ancient texts

I.2.1. Texts cited by author or title

Actes de la Conference de Carthage en 411, ed. Serge Lancel, 4 vols., SCh 194, 195, 224, 373 (Paris : du Cerf, 1972—91).

Ammianus Marcellinus, ed. and tr. John C. Rolfe, revised edn, 3 vols, LCL 300, 315, 331 (Cambridge, MA: Harvard University Press, 1971—2).

Artemidorus Daldianus, *The Interpretation of Dreams*, tr. R.J. White, *Noyes Classical Studies* (Park Ridge, NJ: Noyes, 1975).

- Basil, *Letters*, tr. Roy J. Deferrari, 4 vols, LCL 190, 215, 243, 270 (London: Heinemann, 1926—39).
- Claudian, ed. and tr. Maurice Platnauer, 2 vols, LCL 135—136 (London: Heinemann, 1922),
 Claudii Claudiani *De Bello Gildonico*, ed. and tr. E.M. Olechowska (Leiden: Brill, 1978).
- Code Théodosien. Livre XVI*, ed. Theodor Mommsen, tr. Jean Rougé and Roland Delmaire, SCH 497 (Paris: du Cerf, 2005).
- Collatio Carthaginensis Anni 411, Augustine and Council of Carthage*, ed. Clemens Weidman, CSEL 104 (Berlin: De Gruyter, 2018).
- Cyprian, *De Lapsis and De Ecclesiae Catholicae Unitate*, ed. and tr. Maurice Bévenot, Oxford Early Christian Texts (Oxford: Clarendon Press, 1971).
- _____, *The Letters of St. Cyprian of Carthage*, tr. G.W. Clarke, 4 vols, Ancient Christian Writers 43—4, 46—7 (New York: Newman, 1984—9).
- Sancti Cypriani Episcopi *Epistularium*, ed. G.F. Diercks, 4 vols, CCSL 3A—D (Turnhout: Brepols, 1994—9).
- Eusebius, Bishop of Caesarea, *The Ecclesiastical History and the Martyrs of Palestine*, tr. Hugh Jackson Lawlor and John Earnest Leonard Oulton, 2 vols (London: Society for Promoting Christian Knowledge, 1927—8).
- Gesta conlationis Carthaginensis, anno 411, accedit Sancti Augustini breviculus conlationis*, ed. Serge Lancel, CCSL 149A (Turnhout: Brepols, 1974).
- Hieronymus, *liber de viris inlustribus*; Gennadius, *liber de viris inlustribus*, ed. Ernest Cushing Richardson, Texte und Untersuchungen 14.1 (Leipzig: J.C. Hinrichs, 1896).
- Liber genealogus*, ed. Theodor Mommsen, in *Chronica minora saec. IV. V. VI. VII*, vol. 1, Monumenta Germaniae Historica, Auctorum antiquissimorum 9 (Berlin: Weidmann, 1892), 156—196.
- Optatus, *Against the Donatists*, tr. M.J. Edwards, Translated Texts for Historians 27 (Liverpool: Liverpool University Press, 1997).
- _____, *Sancti Optati Milevitani Libri vii*, ed. Karl Ziwsa, CSEL 26 (Vienna: F. Tempsky, 1893).
- Possidius, *The Life of Saint Augustine, A Translation of the Sancti Augustini Vita by Possidius, Bishop of Calama*, tr. Herbert T. Weiskotten (Merchantville, NJ: Evolution Publishing, 2008; original edn, Princeton, NJ: Princeton University Press, 1919).
- Possidius, *Vita Augustini*, ed. A.A.R. Bastiaensen, in *Vite dei Santi*, ed. C. Mohrmann, vol. 3, *Vita di Cipriani, Vita di Ambrogio, Vita di Agostino* (Milan: Mondadori, 1975).
- Registri Ecclesiae Carthaginensis Excerpta*, in *Concilia Africae a. 345 – a. 525*, ed. C. Munier, CCSL 149 (Turnhout: Brepols, 1974), 182—232.

- Tertullian, *On the Testimony of the Soul and On the 'Prescription' of Heretics*, tr. T. Herbert Bindley (London: Society for Promoting Christian Knowledge, 1914).
- Tertullien, *Traité de la prescription contre les hérétiques*, ed. and tr. R.F. Refoulé, SCh 46 (Paris: du Cerf, 1957).
- The Theodosian Code and Novels, and the Sirmondian Constitutions*, tr. Clyde Pharr, Corpus of Roman Law 1 (Princeton: Princeton University Press, 1952).
- Theodosiani Libri XVI cum Constitutionibus Sirmondianis et Leges Novellae ad Theodosianum Pertinentes*, ed. Th. Mommsen and Paulus M. Meyer (Berlin: apud Weidmannos, 1905).
- (Tyconius) Lo Bue, Francesco, *The Turin Fragments of Tyconius' Commentary on Revelation*, ed. G.G. Willis, Texts and Studies n.s. 7 (Cambridge: Cambridge University Press, 1963).
- Victor de Vita, *Histoire de la persécution vandale en Afrique*, ed and tr. Serge Lancel, Collection des Universités de France (Paris: Belles Lettres, 2002).
- Victor of Vita, *History of the Vandal Persecution*, tr. John Moorhead, Translated Texts for Historians 10 (Liverpool: Liverpool University Press, 1992).
- Victoris Episcopi Vitensis *Historia persecutionis Africanae provinciae*, ed. Michael Petschenig, CSEL 7 (Vienna: C. Gerold, 1881).

I.2.2. Collections and corpora cited by editor

- Gaudemet, Jean, *Conciles Gaulois du IV^e siècle*, SCh 241 (Paris: du Cerf, 1977).
- Maier, J.L., *Le dossier du donatisme*, 2 vols, Texte und Untersuchungen 134—5 (Berlin: Akademie Verlag, 1987—89).
- Munier, C. (ed.), *Concilia Africae a. 345 – a. 525*, CCSL 149 (Turnhout: Brepols, 1974).
- Tilley, Maureen A. (tr.), *Donatist Martyr Stories: The Church in Conflict in Roman North Africa*, Translated Texts for Historians 24 (Liverpool: Liverpool University Press, 1996).

II. Secondary sources

- Adamiak, Stanislaw, 'When did Donatist Christianity End?', in *Uniquely African Controversy*, ed. Dupont *et al.*, 211—36,
- Alexander, J.S., 'A Note on the Interpretation of the Parable of the Threshing Floor at the Conference of Carthage of A.D. 411', *JTS* 24.2 (1973): 512—19.
- _____, 'Aspects of Donatist Scriptural Interpretation at the Council of Carthage', *Studia Patristica* 15 (1984): 125—30.
- _____, 'Count Taurinus and the Persecutors of Donatism', *ZAC/JAC* 2.2 (1998): 247—67.

- _____, 'Criteria for Discerning Donatist Sermons', *Studia Patristica* 38 (2001): 3—7.
- Atkinson, J.E., 'Out of Order: The Circumcellions and Codex Theodosianus 16, 5, 52', *Historia* 41.4 (1992), 488—99.
- Augustinus Magister: Congrès international augustinien, Paris, 21—24 septembre, 1954*, 3 vols (Paris: Etudes Augustiniennes, 1954),
- _____, 'The Motive for a Distinction between Donatus of Carthage and Donatus of Casae Nigrae', *JTS* 31 (1980): 540—7.
- Ando, Clifford, 'Brent D. Shaw, *Sacred Violence: African Christians and Sectarian Hatred in the Age of Augustine*', *Bryn Mawr Classical Review*, 2012.8.30.
- Barnes, Timothy D., *Athanasius and Constantius: Theology and Politics in the Constantinian Empire* (Cambridge, MA: Harvard University Press, 1993).
- _____, *Constantine and Eusebius* (Cambridge, MA: Harvard University Press, 1981).
- _____, *Early Christian Hagiography and Roman History* (Tübingen: Mohr Siebeck, 2010).
- _____, *Early Christianity and the Roman Empire* (London: Variorum, 1984).
- _____, *Tertullian: A Historical and Literary Study* (Oxford: Clarendon Press, 1971).
- _____, 'The Beginnings of Donatism', *JTS* 26 (1975): 13—22, 1975.
- _____, *The New Empire of Diocletian and Constantine* (Cambridge, MA: Harvard University Press, 1982).
- Bass, Alden Lee, 'Justus sibi lex est: Donatist Interpretation of Romans 2: 14 and Roman Civil Law', in David Meconi (ed.), *Secular Struggles and Sacred Scripture* (Leiden: Brill, 2015), 162—78.
- Berndt, Guido M. and Roland Steinacher (eds), *Arianism: Roman Heresy and Barbarian Creed* (Farnham: Ashgate, 2014).
- Berrouard, M.-F., 'La date des *Tractatus I—LIV in Johannis Evangelium* de Saint Augustin', *Rec Aug* 7 (1971): 105—68.
- Boeft, Jan den, *Philological and Historical Commentary on Ammianus Marcellinus XXIX* (Leiden; Boston: Brill, 2013).
- Bonner, Gerald, 'Dic Christi Veritas Ubi Nunc Habitas: Ideas of Schism and Heresy in the Post-Nicene Age', in William E. Klingshirn and Mark Vessey (eds), *The Limits of Ancient Christianity: Essays on Late Antique Thought and Culture in Honor of R.A. Markus* (Ann Arbor: University of Michigan Press, 1999), 63—79.
- _____, *St Augustine of Hippo: Life and Controversies* (London: SCM, 1963).
- Bowlin, R., 'Augustine on Justifying Coercion', *Annual Meeting of the Society of Christian Ethics* 17 (1997): 49—70.

Brown, Peter, *Augustine of Hippo: A Biography*, new edn with an epilogue (Berkeley: University of California Press, 2000).

_____, *Power and Persuasion in Late Antiquity: Towards a Christian Empire* (Madison: University of Wisconsin Press, 1992).

_____, *Religion and Society in the Age of Saint Augustine* (London: Faber and Faber, 1972).

_____, 'Religious Coercion in the Later Roman Empire: The Case of North Africa', *History* 48 (1963): 285—305.

_____, 'Religious Dissent in the Later Roman Empire: The Case of North Africa', *History* 46 (1961): 83—101.

_____, 'St. Augustine's Attitude to Religious Coercion', *JRS* 54 (1964): 107—16,

Bruce, Joshua, 'Appealing to Antichrist: A Critical Examination of Donatist Juridical Appeals', *Studia Patristica* (forthcoming).

_____, 'The Necessities of Judgment: Augustine's Juridical Response to the Donatists', *Studia Patristica* (forthcoming).

Caner, Daniel, *Wandering, Begging Monks: Spiritual Authority and the Promotion of Monasticism in Late Antiquity*, *Transformation of the Classical Heritage* 33 (Berkeley: University of California Press, 2002).

Clover, Frank M., 'Carthage and the Vandals', in J. H. Humphrey (ed.), *Excavations at Carthage 1978, Conducted by the University of Michigan*, vol. 7 (Ann Arbor: Kelsey Museum, University of Michigan, 1982), 1—22.

_____, 'Carthage in the Age of Augustine', in J. H. Humphrey (ed.), *Excavations at Carthage 1976, Conducted by the University of Michigan*, vol. 4 (Ann Arbor: Kelsey Museum, University of Michigan, 1978), 1—14.

_____, 'Felix Karthago', *DOP* 40 (1986): 1—16.

_____, *The Late Roman West and the Vandals* (Aldershot: Variorum, 1993).

_____, 'The Pseudo-Boniface and the Historia Augusta', in *Bonner Historia-Augusta-Colloquium 1977/78*, ed. Andreas Alföldi, *Antiquitas*, Reihe 4.14 (Bonn: Rudolf Habelt, 1980), 73—95.

Conant, Jonathan, 'Europe and the African Cult of Saints, circa 350—900: An Essay in Mediterranean Communications', *Speculum* 85.1 (2010): 1—46.

_____, *Staying Roman: Conquest and Identity in Africa and the Mediterranean, 439—700* (Cambridge: Cambridge University Press, 2012).

Courtois, Christian, *Les Vandales et l'Afrique* (Paris, Arts and métiers graphiques, 1955).

_____, *Victor de Vita et son œuvre, Étude Critique* (Algiers: Imprimerie officielle, 1954).

Dekkers, Eligius, *Clavis Patrum Latinorum*, 3rd edn (Turnhout: Brepols, 1995).

De Veer, A.-C., 'L'Exploitation du schisme maximianiste par saint Augustin dans sa lutte contre le Donatisme', *Recherches Augustiniennes* 3 (1965): 219–37.

Dodaro, Robert and George Lawless (eds), *Augustine and His Critics: Essays in Honor of Gerald Bonner* (London: Routledge, 2000),

Dossey, Lesley, 'Judicial Violence and the Ecclesiastical Courts in Late Antique North Africa', in R.W. Mathisen (ed.), *Law, Society and Authority in Late Antiquity* (Oxford: Oxford University Press, 2001), 98—114.

_____, *Peasant and Empire in Christian North Africa*, Transformation of the Classical Heritage 47 (Berkeley: University of California Press, 2010).

_____, 'The Last Days of Vandal Africa: An Arian Commentary on Job and its Historical Context', *JTS* 54 (2003): 60–138.

Drake, H.A., 'Lambs into Lions: Explaining Early Christian Intolerance', *Past and Present* 153.1 (1996): 3—36.

_____, (ed.), *Violence in Late Antiquity: Perceptions and Practices* (Aldershot: Ashgate, 2006).

Dunn, Geoffrey D., 'Heresy and Schism According to Cyprian of Carthage', *JTS* 55.2 (2004): 551—74.

Dupont, Anthony, Matthew Alan Gaumer, and Mathijs Lamberigts (eds), *The Uniquely African Controversy: Studies on Donatist Christianity* (Leuven: Peeters, 2015).

Duval, Yvette, *Loca Sanctorum Africae: le culte des martyrs en Afrique du IV^e au VII^e siècle*, 2 vols, Collection de l'École française de Rome 58 (Rome: École française de Rome, 1982).

Edwards, Mark, *Catholicity and Heresy in the Early Church* (Farnham, Surrey: Ashgate, 2009).

Fitzgerald, Allan D. (ed.), *Augustine through the Ages: An Encyclopedia* (Grand Rapids: Eerdmans, 1999).

_____, 'Circumcellions', in *Augustine through the Ages: An Encyclopedia*, ed. Allan D. Fitzgerald (Grand Rapids: Eerdmans, 1999), 193—4.

_____, 'Johannis evangelium tractatus, In', in *Augustine through the Ages: An Encyclopedia*, ed. Allan D. Fitzgerald (Grand Rapids: Eerdmans, 1999), 474—5.

Fournier, Eric, 'The Vandal Conquest of North Africa: The Origins of a Historiographical Persona', *JEH* 68.4 (2017): 687—718;

_____, 'Victor of Vita and the Conference of 484: A Pastiche of 411?', *Studia Patristica* 62 (2013): 395—408.

Freund, W.H.C., *Archaeology and History in the Study of Early Christianity* (London: Variorum, 1988).

- _____, 'Circumcellions and Monks', *JTS* 20.2 (1969): 542—9.
- _____, 'Donatus "paene totam Africam decepit". How?', *JEH* 48.4 (1997): 611—27.
- _____, 'Manichaeism in the Struggle between Saint Augustine and Petilian of Constantine', in *Augustinus Magister: Congrès international augustinien, Paris, 21—24 septembre, 1954*, 3 vols (Paris: Etudes Augustiniennes, 1954), 2, 859—66.
- _____, *Martyrdom and Persecution in the Early Church: A Study of a Conflict from the Maccabees to Donatus* (Oxford: Blackwell, 1965).
- _____, *Orthodoxy, Paganism, and Dissent in the Early Christian Centuries* (Aldershot: Ashgate, 2002).
- _____, *Religion Popular and Unpopular in the Early Christian Centuries* (London: Variorum, 1976).
- _____, 'The Cellae of the African Circumcellions', *JTS* 3.1 (1952): 87—9.
- _____, *The Donatist Church: A Movement of Protest in Roman North Africa* (Oxford: Clarendon Press, 1952).
- _____, *Town and Country in the Early Christian Centuries* (London: Variorum Reprints, 1980).
- _____, 'When Did the Donatist Schism Begin?', *JTS* 28.1 (1977): 104—9.
- Gaddis, Michael, *There Is No Crime for Those Who Have Christ: Religious Violence in the Christian Roman Empire*, Transformation of the Classical Heritage 39 (Berkeley: University of California Press, 2005).
- Gaumer, Matthew Alan, 'Donatists Abound!!!', in Anthony Dupont *et al.* (eds), *The Uniquely African Controversy: Studies on Donatist Christianity* (Leuven: Peeters, 2015), 29—70.
- _____, 'The Election of Primian of Carthage: The Beginning of the End of Donatist Christianity?' *ZAC/JAC* 16.2 (2012): 292—310.
- _____, and Anthony Dupont, 'Donatist North Africa and the Beginning of Religious Coercion by Christians: A New Analysis', *Ciudad de Dios: Revista Agustiniiana* 223 (2010): 445—6
- _____, 'Understanding Augustine's Changing Justification for State-sponsored Religious Coercion and Its Context within Donatist North Africa', *Augustinus* 54.2 (2009): 345—71.
- Geltner, G., *Flogging Others: Corporal Punishment and Cultural Identity from Antiquity to the Present* (Amsterdam: Amsterdam University Press, 2016).
- Graumann, Thomas, 'Upstanding Donatists: Symbolic Communication at the Conference of Carthage (411)', *ZAC/JAC* 15.2 (2011): 329—55.
- Greenshields, Malcolm R., and Thomas A Robinson (eds), *Orthodoxy and Heresy in Religious Movements: Discipline and Dissent* (Lewiston, NY: Edwin Mellen, 1992).

Hanson, R.P.C., *The Search for the Christian Doctrine of God: The Arian Controversy, 318–381* (Edinburgh, T & T Clark, 1988).

Harries, Jill, *Law and Empire in Late Antiquity* (Cambridge: Cambridge University Press, 1999).

Heather, P.J., *Goths and Romans 332–489* (Oxford: Clarendon Press, 1991).

_____, and John Matthews, *The Goths in the Fourth Century*, Translated Texts for Historians 11 (Liverpool: Liverpool University Press, 1991).

Heil, Uta, ‘The Homoians’, in Guido M. Berndt and Roland Steinacher (eds), *Arianism: Roman Heresy and Barbarian Creed* (Farnham: Ashgate, 2014), 85–115.

Hermanowicz, Erika T., ‘Book Six of Augustine’s *De musica* and the Episcopal Embassies of 408’, *AugStud* 35.2 (2004): 165–98.

_____, ‘Catholic Bishops and Appeals to the Imperial Court: A Legal Study of the Calama Riots in 408’, *J ECS* 12.4 (2004): 481–521.

_____, *Possidius of Calama* (Oxford: Oxford University Press, 2008).

Hess, Hamilton, *The Canons of the Council of Sardica, AD 343: A Landmark in the Early Development of Canon Law* (Oxford: Clarendon Press, 1958).

_____, *The Early Development of Canon Law and the Council of Serdica* (Oxford: Clarendon Press, 2002).

Hombert, Pierre-Marie, *Nouvelles recherches de la chronologie augustiniennne* (Paris: Institut d’études Augustiniennes, 2000).

Hoover, Jesse, ‘Arius and Mani and Montanus, O My! Perceptions of Heresy within the Donatist Church’ (<http://www.academia.edu/32690191/>

Arius and Mani and Montanus O My Perceptions of Heresy within the Donatist Church).

_____, ‘The “Arianization” of the Donatist Communion in Late Antique Heresiology’ (<http://baylor.academia.edu/JesseHoover>).

_____, ‘“They bee Full Donatists”: The Rhetoric of Donatism in Early Separatist Polemics’, *Reformation & Renaissance Review* 15.2 (2013): 154–76.

Humfress, Carolyn, ‘Bishops and Law Courts in Late Antiquity: How (Not) to Make Sense of the Legal Evidence’, *J ECS* 19.3 (2011): 375–400.

_____, ‘Controversialist: Augustine in Combat’, in Mark Vessey (ed.) *A Companion to Augustine* (Chichester: Wiley-Blackwell, 2012), 323–35.

_____, *Orthodoxy and the Courts in Late Antiquity* (Oxford: Oxford University Press, 2007).

Jones, A.H.M., *Constantine and the Conversion of Europe* (London: English Universities Press, 1949).

_____, *The Later Roman Empire, 284—602: A Social, Economic and Administrative Survey*, 3 vols (Oxford: Blackwell, 1964).

_____, 'Were Ancient Heresies National or Social Movements in Disguise?', *JTS* 11 (1959): 280—98.

_____, J.R. Martindale, and John Morris, *The Prosopography of the Later Roman Empire*, 3 vols in 4 (Cambridge: Cambridge University Press, 1971—92).

Kaizer, Ted, 'From Zenobia to Alexander the Sleepless: Paganism, Judaism and Christianity at Late Roman Palmyra', in *Zeitreisen: Syrien, Palmyra, Rom. Festschrift für Andreas Schmidt-Colinet zum 65. Geburtstag*, ed. Beatrix Bastl *et al.* (Vienna: Phoibos, 2010), 113–23.

Kaufman, Peter Iver, 'Augustine, Macedonius, and the Courts', *AugStud* 34.1 (2003): 67—82.

_____, 'Augustine's Punishments', *HTR* 109.4 (2016): 550—66.

Kelly, J.N.D., *Jerome. His Life, Writings, and Controversies* (London: Duckworth, 1975).

Klingshirn, William E. and Mark Vessey (eds), *The Limits of Ancient Christianity: Essays on Late Antique Thought and Culture in Honor of R.A. Markus* (Ann Arbor: University of Michigan Press, 1999).

La Bonnardière, A.-M., *Recherches de chronologie augustienne* (Paris: Études augustiniennes, 1965),

Lamb, Michael, 'Augustine and Republican Liberty: Contextualizing Coercion', *AugStud* 48.12 (2017): 119—59.

Lamirande, Émilien, *Church, State, and Toleration: An Intriguing Change of Mind in Augustine* (Villanova, PA: Augustinian Institute, Villanova University, 1975).

Lancel, Serge, *Saint Augustin* (Paris: Fayard, 1999).

_____, *Saint Augustine*, tr. Antonia Nevill (London: SCM, 2002).

Lenski, Noel, 'Harnessing Violence: Armed Force as Manpower in the Late Roman Countryside', *JLA* 6.2 (2013): 233—50.

Lewis, C.T., and C. Short, *A Latin Dictionary* (Oxford: Clarendon Press, 1886),

Lexicon of Greek Personal Names (<http://www.lgpn.ox.ac.uk/index.html>).

McEvoy, Meaghan A., *Child Emperor Rule in the Late Roman West, AD 367—455* (Oxford, Oxford University Press, 2013).

MacNeil, Heather, *Trusting Records: Legal, Historical and Diplomatic Perspectives* (Dordrecht: Kluwer Academic, 2000).

McLynn, Neil, *Ambrose of Milan: Church and Court in a Christian Capital*, Transformation of the Classical Heritage 12 (Berkeley: University of California Press, 1994).

_____, 'Augustine's Roman Empire', *AugStud* 30.2 (1999): 29—44.

Mandouze, André, *et al.*, *Prosopographie de l'Afrique chrétienne (303—533)*, Prosopographie chrétienne du Bas-Empire 1 (Paris: Centre national de la recherche scientifique, 1982).

Markus, Robert, *Augustine: A Collection of Critical Essays* (Garden City, NY: Anchor, 1972).

_____, 'Christianity and Dissent in Roman North Africa: Changing Perspectives in Recent Work', in Derek Baker (ed.), *Schism, Heresy and Religious Protest*, Studies in Church History 9 (Cambridge: Cambridge University Press, 1972), 21—36;

_____, *Christianity and the Secular* (Notre Dame, IN: University of Notre Dame Press, 2006).

_____, 'Country Bishops in Byzantine Africa', in D. Baker (ed.), *The Church in Town and Countryside*, Studies in Church History 16 (Oxford: Blackwell for the Ecclesiastical History Society, 1979), 1—15.

_____, 'Donatism: The Last Phase', in C.W. Dugmore and C. Duggan (eds), *Papers Read at the First Winter and Summer Meetings of the Ecclesiastical History Society*, Studies in Church History 1 (London: Nelson, 1964), 118—26.

_____, *From Augustine to Gregory the Great: History and Christianity in Late Antiquity* (London: Variorum Reprints, 1983).

_____, 'Reflections on Religious Dissent in North Africa in the Byzantine Period', in G.J. Cuming (ed.), *Papers Read at the Third Winter and Summer Meetings of the Ecclesiastical History Society*, Studies in Church History 3 (Leiden: Brill, 1966), 140—9.

_____, *Sacred and Secular: Studies on Augustine and Latin Christianity* (Aldershot: Variorum, 1994).

_____, *Saeculum: History and Society in the Theology of St. Augustine* (Cambridge: Cambridge University Press, 1970; 2nd edn, 1988).

_____, 'Tempora Christiana Revisited', in Robert Dodaro and George Lawless (eds), *Augustine and His Critics: Essays in Honor of Gerald Bonner* (London: Routledge, 2000), 201—13.

_____, *The End of Ancient Christianity* (Cambridge: Cambridge University Press, 1990).

_____, 'The Problem of "Donatism" in the Sixth Century', in *Gregorio Magno e il suo tempo: XIX Incontro di studiosi dell'antichità cristiana in collaborazione con l'École française de Rome, Roma, 9–12 maggio 1990*, 2 vols, *Studia ephemeridis 'Augustinianum'* 33—34 (Rome: Institutum Patristicum "Augustinianum", 1991), 1, 159—66.

Marone, Paola, *Donatism. Online Dynamic Bibliography* (Sapienza Università di Roma; <http://donatism.org>).

Mathison, R.W., 'Barbarian Bishops and the Churches "in Barbaricis Gentibus" during Late Antiquity', *Speculum* 72.3 (1997): 664—97.

_____. (ed.), *Law, Society and Authority in Late Antiquity* (Oxford: Oxford University Press, 2001).

Matthews, John, *Laying Down the Law: A Study of the Theodosian Code* (London/New Haven: Yale University Press, 2000).

_____, *Western Aristocracies and Imperial Court, A.D. 364—425* (Oxford: Clarendon Press, 1975).

Merdinger, J.E., *Rome and the African Church in the Time of Augustine* (New Haven: Yale University Press, 1997).

Merrills, A.H., 'The Secret of My Succession: Dynasty and Crisis in Vandal North Africa', *Early Medieval Europe* 18.2 (2010): 135—59.

_____, *Vandals, Romans and Berbers: New Perspectives on Late Antique North Africa* (Aldershot: Ashgate, 2004).

_____, and Richard Miles, *The Vandals* (Oxford: Wiley-Blackwell, 2010).

Monceaux, Paul, *Histoire littéraire de l'Afrique chrétienne depuis les origines jusqu'à l'invasion arabe*, 7 vols (Paris: Ernest Leroux, 1901—23).

Newman, John Henry Cardinal, *Apologia pro Vita Sua, Being a History of His Religious Opinions*, [uniform edition] (London: Longmans, Green, and Co., 1908).

O'Donnell, James Joseph, *Augustine, Sinner & Saint: A New Biography* (London: Profile, 2005).

O'Donovan, Oliver, and Joan Lockwood O'Donovan, *From Irenaeus to Grotius: A Sourcebook in Christian Political Thought 100—1625* (Grand Rapids: Eerdmans, 1999),

Parvis, Sara, *Marcellus of Ancyra and the Lost Years of the Arian Controversy, 325—345* (Oxford: Oxford University Press, 2006).

Peltari, Aaron, 'Donatist Self-Identity and "The Church of the Truth"', *Augustinianum* 49.2 (2009): 359—69.

Ployd, Adam, *Augustine, the Trinity, and the Church: A Reading of the Anti-Donatist Sermons* (New York: Oxford University Press, 2015).

_____, 'Body/Power/Identity: Passions of the Martyrs', *J ECS* 4.3 (1996): 269—312.

_____, 'Non poena sed causa: Augustine's Anti-Donatist Rhetoric of Martyrdom', *AugStud* 49.1 (2018): 25—44.

_____, 'The Power of Baptism: Augustine's Pro-Nicene Response to the Donatists', *J ECS* 22.4 (2014): 519—40.

_____, 'The Unity of the Dove: The Sixth Homily on the Gospel of John and Augustine's Trinitarian Solution to the Donatist Schism', *AugStud* 42 (2011): 57—77.

- Riggs, D.L., 'Christianizing the Rural Communities of Late Roman Africa: A Process of Coercion or Persuasion?', in H.A. Drake, *Violence in Late Antiquity. Perceptions and Practices* (Aldershot: Ashgate, 2006), 297—309;
- Roncoroni, A., 'Sulla morte di re Unerico', in Bruno Luiselli and Manlio Simonetti (eds), *Romanobarbarica*, vol. 2 (Rome: Herder, 1977), 247—57.
- Russell, F.H., 'Persuading the Donatists: Augustine's Coercion by Words', in William E. Klingshirn and Mark Vessey (eds), *The Limits of Ancient Christianity: Essays on Late Antique Thought and Culture in Honor of Robert A. Markus* (Ann Arbor: University of Michigan Press, 1999), 115—30.
- Shanzer, Danuta, 'Intentions and Audiences: History, Hagiography, Martyrdom and Confession in Victor of Vita's *Historia Persecutionis*', in A.H. Merrills (ed.), *Vandals, Romans and Berbers: New Perspectives on Late Antique North Africa* (Aldershot: Ashgate, 2004), 271—90.
- Schindler, Alfred, 'Die Unterscheidung von Schisma und Haresie in Gesetzgebung und Polemik gegen den Donatismus', in Ernst Dassman and K. Suso Frank (eds), *Pietas: Festschrift für Bernhard Kötting*, Jahrbuch für Antike und Christentum Ergänzungsband 8 (Münster, Westfalen: Aschendorffsche Verlagsbuchhandlung, 1980), 227—36.
- Schwarcz, A., 'The Settlement of the Vandals in North Africa', in A. H. Merrills (ed.), *Vandals, Romans and Berbers: New Perspectives on Late Antique North Africa* (Aldershot: Ashgate, 2004), 49—57.
- Shaw, Brent D., 'African Christianity: Disputes, Definitions and "Donatists"', in Malcolm R. Greenshields and Thomas A Robinson (eds), *Orthodoxy and Heresy in Religious Movements: Discipline and Dissent* (Lewiston, NY: Edwin Mellen, 1992), 5—34,
- _____. 'Augustine and Men of Imperial Power', *Journal of Late Antiquity* 8.1 (2015): 32—61.
- _____, 'Bad Boys: Circumcellions and Fictive Violence', in H.A. Drake (ed.), *Violence in Late Antiquity: Perceptions and Practices* (Aldershot: Ashgate, 2006), 179—97.
- _____, 'Body/Power/Identity: Passions of the Martyrs', *J ECS* 4.3 (1996): 268—312.
- _____, *Environment and Society in Roman North Africa: Studies in History and Archaeology* (Aldershot: Variorum, 1995).
- _____, 'Judicial Nightmares and Christian Memory', *J ECS* 11.4 (2003): 533—63.
- _____, *Rulers, Nomads, and Christians in Roman North Africa* (Aldershot: Variorum, 1995).
- _____, *Sacred Violence: African Christians and Sectarian Hatred in the Age of Augustine* (Cambridge: Cambridge University Press, 2011).
- _____, 'State Intervention and Holy Violence: Timgad/Paleostrovsk/Waco', *JAAR* 77.4 (2009): 853—94.

_____, 'Who Were the Circumcellions?', in A.H. Merrills (ed.), *Vandals, Romans and Berbers: New Perspectives on Late Antique North Africa* (London: Variorum, 2004), 227—58.

Southern, Pat, *Empress Zenobia: Palmyra's Rebel Queen* (London: Hambledon Continuum, 2008).

Sparrow-Simpson, W.J., *Saint Augustine and African Church Divisions* (London: Longmans, Green, 1910).

Steinacher, Roland, 'Von Würmern bei lebendigem Leib zerfressen... und die Läuse sucht Phtheiriasis. Ein antikes Strafmotiv und seine Rezeptionsgeschichte', *Tyche. Beiträge zur Alten Geschichte, Papyrologie und Epigraphik* 18 (2003): 145—66.

Telfer, W., 'The Codex Verona LX(58)', *HTR* 36 (1943): 169—246.

Tengström, Emin, *Donatisten und Katholiken: soziale, wirtschaftliche und politische Aspekte einer nordafrikanischen Kirchenspaltung* (Göteborg: Elanders, 1964).

Tilley, Maureen A., 'African Asceticism: The Donatist Heritage', in *Uniquely African Controversy*, ed. Dupont *et al.*, 127—40.

_____, 'Dilatory Donatists or Procrastinating Catholics: The Trial at the Conference of Carthage', *ChHist* 60 (1990): 7—19.

_____, *Donatist Martyr Stories: The Church in Conflict in Roman North Africa*, Translated Texts for Historians 24 (Liverpool: Liverpool University Press, 1996).

_____, 'Family and Financial Conflict in the Donatist Controversy: Augustine's Pastoral Problem', *AugStud* 43.1/2 (2012): 49—64.

_____, 'Redefining Donatism: Moving Forward', *AugStud* 42 (2011): 21—32.

_____, 'Sacred Violence: African Christians and Sectarian Hatred in the Age of Augustine by Brent D. Shaw (review)', *JECS* 21.2 (2013): 291—3.

_____, 'Scripture as an Element of Social Control: Two Martyr Stories of Christian North Africa', *HTR* 83 (1990): 383—97.

_____, 'Sustaining Donatist Self-Identity: From the Church of the Martyrs to the *Collecta* of the Desert', *JECS* 5.1 (1997): 21—35.

_____, 'The Ascetic Body and the (Un)Making of the World of the Martyr', *JAAR* 59 (1990): 467—79.

_____, *The Bible in Christian North Africa: The Donatist World* (Minneapolis: Fortress, 1997).

_____, 'When Schism Becomes Heresy in Late Antiquity: Developing Doctrinal Deviance in the Wounded Body of Christ', *JECS* 15.1 (2007): 1—21.

Uhalde, Kevin, *Expectations of Justice in the Age of Augustine* (Philadelphia: University of Pennsylvania Press, 2007).

van Egmond, Bartholomeus, 'Merciful Severity. Augustine of Hippo's Early Thought on the Redemptive Function of Divine Judgment' (doctoral dissertation, Katholieke Universiteit Leuven, 2015).

Van Geest, Paul, 'Quid dicam de vindicando vel non vindicando? (*Ep.* 95, 3). Augustine's Legitimation of Coercion in the Light of His Roles of Mediator, Judge, Teacher and Mystagogue', in *Violence in Ancient Christianity. Victims and Perpetrators*, Supplements to Vigiliae Christianae 125 (2014): 151—84.

_____, 'Timor est servus caritatis (s. 156,13-14): Augustine's Vision on Coercion in the Process of Returning Heretics to the Catholic Church and his Underlying Principles', in Anthony Dupont *et al.* (eds), *The Uniquely African Controversy: Studies on Donatist Christianity* (Leuven: Peeters, 2015), 289—310.

Vessey, Mark (ed.) *A Companion to Augustine* (Chichester: Wiley-Blackwell, 2012).

Wardman, Alan E., 'Usurpers and Internal Conflicts in the 4th Century A.D.' *Historia* 33.2 (1984): 220—37,

Whelan, Robin, 'African Controversy: The Inheritance of the Donatist Schism in Vandal Africa', *JEH* 65.3 (2014): 504—21.

_____, *Being Christian in Vandal Africa: The Politics of Orthodoxy in the Post-Imperial West* (Berkeley: University of California Press, 2017)

Wilhite, David, *Ancient African Christianity: An Introduction to a Unique Context and Tradition* (London: Routledge, Taylor & Francis, 2017).

Williams, Rowan, 'Defining Heresy', in Alan Kreider (ed.), *The Origins of Christendom in the West* (Edinburgh: T&T Clark, 2001), 324—7.

Willis, Geoffrey Grimshaw, *Saint Augustine and the Donatist Controversy* (London: S.P.C.K, 1950).

Wynn, Phillip, 'Rufinus of Aquileia's Ecclesiastical History and Victor of Vita's History of the Vandal Persecution', *Classica et Medievalia* 41 (1990): 187—98.

Appendix 1: The Donatist Appeals

Recipient / Date of Appeal?	Key Primary Evidence?	Text of Appeal?	Subject of Appeal?	Response to Appeal?	Text of Response?	Contested by Donatists?
Constantine Spring 313	Eusebius / Optatus / Augustine	Yes	Property / Caecilian's Election	Denied	Yes	No
Constantine Fall 313	Eusebius / Optatus / Augustine	No	Miltiades' Decision	Denied	No	No
Taurinus ca. 340	Optatus	No	Repression of Circum.	Granted	No	No
(From) Easterners c. 343	Optatus / Augustine / Hilary	Yes	Alliance after Serdica in 343	Unknown	No	No
Constans 346	Optatus	Lost	Recognition as senior primate	Denied / Imperial Repression	Unknown / Lost	No
Julian 362	Optatus / Augustine / <i>CTh.</i> 16.5.37	Yes / Partial	Return of exiles / property	Granted	Yes / Partial	No
Firmus ca. 373/5	Optatus / Augustine	Lost	Repression of Rogatists	Granted	No	Unclear
Gildo 397/398	Augustine	Lost	Repression of Maximianists	Granted	No	Yes
North African Magistrates mid-late 390s	Augustine	Lost	Repression of Maximianists	Granted	No	No
Honorius 404	Augustine / Possidius / <i>Actes</i> of 411	Lost	Heresy Conviction of Crispinus	Denied / Imperial Repression	No	No
Honorius 406	Augustine / <i>Actes</i> of 411	No	Relaxation of Edict of Unity	Denied / if it happened	No	Yes
Honorius 411	Possidius	Lost	Overturning Marcellinus' Ruling at 411	Denied	No	No